

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 10. BOARD OF COSMETOLOGY

[R05-391]

PREAMBLE

1. Sections Affected

R4-10-104
R4-10-107
R4-10-112
R4-10-207
R4-10-208
R4-10-302
R4-10-303
R4-10-304
R4-10-305
R4-10-306

Rulemaking Action

Amend
Amend
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Amend

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 32-504(A)(1)

Implementing statutes: A.R.S. §§ 32- 510, 32-511, 32-512, 32-514 32-517, 32-531, 32-541, and 32-555.

3. The effective date of the rules:

December 5, 2005

4. A list of all previous notices appearing in the *Register* addressing the final rule:

Notice of Rulemaking Docket Opening: 10 A.A.R. 2839, July 9, 2004

Notice of Proposed Rulemaking: 10 A.A.R. 2754, July 9, 2004

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Cheryl Adams, Deputy Director and Rules Coordinator

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6. An explanation of the rule, including the agency's reason for initiating the rule:

A.R.S. § 32-504 requires the Arizona State Board of Cosmetology to adopt rules for the regulation of the cosmetology licensing, sanitary and safety standards, and the examination of candidates for licensure, and to prescribe minimum school requirements and curriculum requirements. Recent statutory changes require updates to several rules to make them comply with the law.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

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8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

The Board of Cosmetology, licensed schools, and students will bear any costs associated with the rule changes. The biggest change requires more hours for licensure as a nail technician; however, the hour requirement is in statute and the rule is simply changed to conform. No cost results from the rule change itself. Most rule changes are to clarify existing rules, make them more easily readable, take out redundancies, and correct references to other rules.

Other changes eliminate the requirement to have a signature notarized which may result in a small saving.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Minor editorial changes were made as a result of the Governor's Regulatory Review Council review.

11. A summary of the comments made regarding the rule and the agency response to them:

Comment: Four comments were received regarding the student to teacher ratio found in R4-10-302(D). Three comments (from Sharon Wilson of Maricopa Beauty College, Glen Mehlhorn of Maricopa Beauty College, and Karla Cooper of Artistic Beauty Colleges) were against any ratio and two stated that the ratio does not belong as a part of the student-instructor rule and that "Cosmetology colleges are post-secondary education facilities and teach adult students. No other colleges or universities that teach adult students in the state of Arizona are required to have a student/teacher ratio." These comments state that the schools must meet reasonable sanitation and safety requirements, which are sufficient, and it should be up to the school to set standards.

One comment (from Charles Bartolomeo and 4 staff members of Charles of Italy school) is in favor of the ratio stating that while they are not in favor of a ratio as high as 40 to 1, the impact would be less significant in a classroom environment, but eliminating it altogether would have a "... negative impact on the quality of student training and clinic supervision would put the general public at risk. ..."

Answer: The Board visited this issue when these rule changes were first proposed, and believed then as it does today, that a student-teacher ratio is important in such a hands-on environment while working on the general public with chemicals and potentially harmful tools, instruments, and machines. There are comparable rules for nursing students in R4-19-204(C) setting a ratio of 10 to one and in R4-19-801(C) again with a ratio of 10 to 1 for nursing assistants. The ratio contained in the Board's rule is not new and has been in rule since 1996.

Comment: A comment from Karla Cooper of Artistic Beauty Colleges stated that the proposed requirement for a microdermabrasion machine in the schools is advanced practice and "... should not be mandated by the state. ..."

Answer: Use of microdermabrasion machines has become commonplace in the profession, and the Board believes that it is necessary that students understand how to control the machine and use it safely at a non-invasive level.

Comment: Several comments were received by e-mail from Mr. Eric Westcott. The Board replied to him through the same medium. Some of his comments were in the form of a question, and are not set forth here.

Answer: Regarding Mr. Westcott's comment that the requirement for a chlorine bleach disinfectant should be changed to a requirement as in (A)(5) and (6) for R4-10-112(R)(5), the wording was changed to reflect the higher standard of disinfectant required in subsection (A)(5) or (6) and not set the standard for the unstable and corrosive chlorine bleach.

A comment regarding disinfecting electrical equipment states that the wording for subsection R4-10-112(N)(2) should be changed to "compatible for use with electrical equipment." The Board agreed to his wording, and it was changed.

Regarding his comment for R4-10-112(N)(2) that it is impossible to maintain a shampoo bowl in a sanitary condition at all times, the Board agreed and the wording "in a sanitary condition at all times" was deleted.

Mr. Westcott suggested that the wording be changed for nail file usage; however adding the proposed wording to the nail file package would leave the nail file manufacturer in charge of the standard, not the Board. This was not changed.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:

Not applicable

14. Was this rule previously made as an emergency rule?

No.

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15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 10. BOARD OF COSMETOLOGY

ARTICLE 1. GENERAL PROVISIONS

Section

- R4-10-104. Application for License by Examination
- R4-10-107. License Renewal
- R4-10-112. Infection Control and Safety Standards

ARTICLE 2. SCHOOLS

Section

- R4-10-207. Nail Technology School Requirements
- R4-10-208. Combined School Requirements

ARTICLE 3. STUDENTS

Section

- R4-10-302. Instructor Curriculum Required Hours
- R4-10-303. ~~Aesthetic~~ Aesthetics Curriculum Required 600 Hours
- R4-10-304. Cosmetology Curriculum Required 1600 Hours
- R4-10-305. Nail Technology Curriculum Required 600 Hours
- R4-10-306. ~~Curriculum~~ Curricula Hours

ARTICLE 1. GENERAL PROVISIONS

R4-10-104. Application for License by Examination

- A. An applicant for an aesthetics, a cosmetology, a nail technician technology, or an instructor license by examination shall submit to the Board:
 - 1. ~~the~~ The applicable fee fees required for the practical and written examination and initial personal license in R4-10-102, and an
 - 2. An application provided by the Board, signed by the applicant, and notarized that contains:
 - a. A passport quality photo of the applicant;
 - ~~1-b.~~ The applicant's name, address, telephone number, social security Social Security number, gender, and birth date;
 - ~~2-c.~~ The name and address of each licensed school attended by the applicant;
 - 3. ~~The name of each aesthetics, cosmetology, nail technician course completed by the applicant, and school name and address where completed;~~
 - 4. ~~If applicable, the~~
 - d. The name of course completed, the name of the school where completed, and the starting date and date of graduation from a school, type of degree received, and the name and address of the school where received;
 - ~~5-e.~~ If previously licensed by the Board, type of license, license number, license expiration date, and the name used on the license;
 - 6. ~~If previously licensed in a state other than Arizona or a foreign country, the name of the state or foreign country and type of license;~~
 - ~~7-f.~~ A statement of whether the applicant has ever had an aesthetician, a cosmetologist, aesthetics, cosmetology, a nail technician technology, or an instructor license suspended or revoked in any state or foreign country; and
 - ~~8-g.~~ A sworn statement by the applicant verifying the truthfulness of the information provided by the applicant; and
 - h. The applicant's signature.
 - B. In addition to ~~submitting the fee and documents complying with the requirements~~ complying with the requirements in subsection (A), an applicant for an aesthetics, nail technology, or cosmetology license by examination shall:
 - 1. Comply with A.R.S. § ~~32-510(A)(2)~~ 32-510, 32-511, or 32-512 by submitting a copy documentation of one of the following:
 - a. Documentation of 23 years of age as demonstrated by a government issued driver's license, identification card, birth certificate, or passport

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- b. ~~A high school transcript demonstrating a 10th grade equivalency;~~
 - e. ~~A high school diploma;~~
 - d. ~~A high school equivalency diploma.~~
 - e. ~~Documentation of an associate degree or an official transcript from an accredited college that only offers courses to be completed in two years that shows completion of 15 credits; or~~
 - f. ~~A bachelor's degree from an accredited college or university.~~
2. Comply with A.R.S. § ~~32-510(A)(3)~~ 32-510, 32-511, or 32-512 by submitting a copy of one of the following:
- a. If the applicant graduated from ~~an aesthetician~~ a course presented by a school licensed by the Board, a written statement signed by the administrator of the school that documents proof of graduation and completion of ~~600 hours in the course~~ all required hours; or
 - b. If the applicant attended more than one ~~licensed~~ school in Arizona, a copy of a transfer application or certification of hours from each school attended, ~~including that includes~~ the starting and ending dates, ~~and a written statement signed by the administrator of each school that documents proof of~~ the total number of hours completed at the school, ~~and the signature of the administrator of the school; or~~ and, if applicable, proof of graduation.
 - e. If the applicant graduated from or completed hours at a school licensed by a state other than Arizona or a foreign country, a graduation certificate and documentation of:–
 - i. ~~Completing the theory of aesthetic as required in R4-10-303(A)(1), and~~
 - ii. ~~Meeting the requirements in R4-10-303(A)(2) and R4-10-303(A)(3).~~
- C. In addition to submitting the fee and documents in subsection (A), an applicant for a cosmetology license shall:
- 1. ~~Comply with A.R.S. § 32-511(A)(2) by submitting a copy of one of the documents in subsection (B)(1).~~
 - 2. ~~Comply with A.R.S. § 32-511(A)(3) by submitting a copy of one of the following:~~
 - a. ~~If the applicant graduated from a cosmetology course presented by a school licensed by the Board, a written statement signed by the administrator of the school that documents proof of graduation and completion of 1600 hours in the course;~~
 - b. ~~If the applicant attended more than one school in Arizona, a copy of a transfer application or certification of hours from each school attended, including the initial and ending dates, the total number of hours completed at the school, and the signature of the administrator of the school; or~~
 - e. ~~If the applicant graduated from or completed hours at a school licensed by a state other than Arizona or a foreign country, a graduation certificate and documentation of:–~~
 - i. ~~Completing the theory of cosmetology as required in R4-10-304(A)(1), and~~
 - ii. ~~Meeting the requirements in R4-10-304(A)(2) and R4-10-304(A)(3).~~
- D. In addition to submitting the fee and documents in subsection (A), an applicant for a nail technician license shall:
- 1. ~~Comply with A.R.S. § 32-512(A)(2) by submitting a copy of one of the documents in subsection (B)(1).~~
 - 2. ~~Comply with A.R.S. § 32-512(A)(3) by submitting a copy of one of the following:~~
 - a. ~~If the applicant graduated from a nail technician's course presented by a school licensed by the Board, a written statement signed by the administrator of the school who documents proof of graduation and completion of 300 hours in the course; or~~
 - b. ~~For each school attended by the applicant, a copy of a transfer application or certification of hours from each school attended, including the starting and ending dates, the total number of hours completed at the school, and the signature of the administrator of the school;~~
- E. In addition to ~~submitting the fee and documents in~~ complying with the requirements in subsection (A), an applicant for an instructor license by examination shall:
- 1. Comply with A.R.S. § ~~32-531(A)(2)~~ 32-531 by submitting ~~a written copy of one of~~ the following:
 - a. ~~A high school diploma~~ Documentation of required work experience;
 - b. ~~A high school equivalency diploma~~ Proof of current licensure in the profession in which experience was gained;
 - c. ~~Documentation of an associate degree or an official transcript from an accredited college that only offers courses to be completed in two years that shows completion of 15 credits; or~~ Proof of licensure during the period experience was gained; and
 - d. Proof of attainment of twenty-three years of age; or
 - e. Proof of high school equivalency.
 - 2. ~~Submit~~ If qualifying under A.R.S. § 32-531(3)(a), submit a copy of ~~one of~~ the following:
 - a. If the applicant graduated from a school licensed by the Board, ~~documentation~~ Documentation of graduation from a Board-licensed school by a certification of graduation on a form supplied by the Board including the starting and ending dates, total number of hours completed, and signature of the administrator of the school; that includes in its course of study; and
 - i. ~~If applying for a cosmetology instructor license, completion of a minimum of; 650 hours of instructor training;~~
 - ii. ~~If applying for a nail technician instructor license, completion of a minimum of; 350 hours of instructor training; or~~

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- iii. ~~If applying for an aesthetics instructor license, completion of a minimum of 500 hours of instructor training;~~
 - b. ~~If the applicant graduated from or completed hours at a school licensed by a state other than Arizona or a foreign country, a graduation certificate and documentation of meeting the requirements in R4-10-302, except for R4-10-302(A)(6); or~~
 - e. ~~If the applicant attended more than one licensed school in Arizona, a copy of a transfer application or certification of hours from each school attended, including the initial starting and ending dates, total number of hours completed, and signature of the administrator of the school.~~
- 3. ~~Comply with A.R.S. § 32-531(A)(3) by submitting documentation of practical experience in the profession applied for on a notarized form, supplied by the Board, that is completed and signed by an owner or manager of a licensed salon or an individual or supplier of cosmetology products with personal knowledge of the applicant's practice for one year that includes the:~~
 - a. ~~Name of the applicant;~~
 - b. ~~Occupation in which applicant gained the experience;~~
 - e. ~~Initial and final dates of applicant's experience in the occupation;~~
 - d. ~~Name and address where applicant gained the experience in the occupation;~~
 - e. ~~If licensed by the Board, license number; and~~
 - f. ~~Name, address, and telephone number of the individual completing the information.~~

Documentation of the work experience required by A.R.S. § 32-531 shall be signed by an owner or manager of a licensed salon, an individual, or a supplier of cosmetology products with personal knowledge of the applicant's licensed experience in the profession for which the applicant seeks an instructor license. The person providing the documentation verifying the applicant's experience shall also indicate the following:

 - a. Profession in which applicant gained the experience;
 - b. Starting and ending dates of applicant's experience in the profession;
 - c. Name of licensed salon and address where applicant gained experience in the profession; and
 - d. License number and name of the licensed individual completing the form; or
 - e. Name, address, and telephone number of the individual completing the information.

R4-10-107. License Renewal

- A. An aesthetician, cosmetologist, nail technician, or instructor licensee shall ~~submit postmark or electronically submit~~ an application packet for renewal to the Board ~~no later than~~ on or before the licensee's birthday.
 - 1. ~~If the applicant mails the application packet, the application packet shall be postmarked on or before the applicant's birthday.~~
 - 2. ~~If the an~~ applicant's birthday falls on a Saturday, Sunday, or legal holiday, ~~an the~~ applicant may file the application packet on the next business day following the applicant's birthday.
 - 32. An application packet consists of:
 - a. ~~An application on a A~~ form provided by the Board that contains
 - i. ~~The the~~ applicant's name, address, and social security Social Security number, and signature or Personal Identification Number (PIN) supplied by the Board if filed electronically;
 - ii b. A statement of whether the applicant has changed the applicant's name since the previous ~~initial or renewal~~ application and, if name has changed, a copy of a legal document, such as a marriage license or divorce decree, showing the name change; and
 - iii c. The fee required in R4-10-102; ~~and,~~
 - iv. ~~The signature of the applicant; and~~
 - b. ~~A copy of a legal document showing the applicant's name change, such as a marriage license or divorce decree.~~
- B. An establishment licensee shall ~~annually postmark or electronically submit to the Board~~ an application for renewal and the fee required in R4-10-102 ~~to the Board no later than June 30 of every year on or before the license renewal date.~~
 - 1. ~~If the applicant mails the application, the application shall be postmarked on or before June 30.~~
 - 2. ~~If June 30th~~ the license renewal date falls on a Saturday, Sunday, or a legal holiday, ~~an the~~ applicant may file the application on the next business day following June 30 the license renewal date.
 - 32. An application consists of a form provided by the Board that contains:
 - a. The establishment's name, ~~manager's license number, and type of~~ and license number;
 - b. ~~If the establishment is a salon that is no longer in business, the date of closure; and~~
 - e. ~~The date and notarized signature of the owner.~~
If the owner is an individual or partnership, the signature and tax identification number of the owner; if the owner is a corporation, the signature of the authorized signer and the tax identification number of the corporation; if filed electronically, the Personal Identification Number (PIN) supplied by the Board may be used in place of the signature; and
 - c. The fee required in R4-10-102.
 - 4. ~~If the establishment is a school, the licensee shall submit the information and documents required in R4-10-201 in addition to the application form.~~

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R4-10-112. Infection Control and Safety Standards

- A.** Establishments, including all areas of employment, passageways, storerooms, and service rooms, shall be well lighted and ventilated. These areas and dispensary fixtures shall be kept in an orderly, clean, and sanitary condition. There shall be a direct entrance into the licensed establishment. The entrance shall not be through living quarters. If connected to a residence, all doors and passageways between living quarters and the licensed establishment shall be closed. A licensed establishment shall not be used for living purposes or other residential use.
- B.** All supplies, equipment, tools, or implements used in performing aesthetics, cosmetology, or nail technology services that contact a person's skin or hair, except wax used for other than depilatory purposes, shall be either discarded, or cleaned and disinfected as provided in subsections (D), (E), and (F), after each contact. The disinfectant used shall be an Environmental Protection Agency registered, hospital grade, bactericidal, virucidal, and fungicidal that is mixed and used according to the manufacturer's directions. A chlorine bleach disinfectant shall be permitted to clean and disinfect counters and linens.
- C.** All supplies, equipment, tools, and implements shall be kept clean, disinfected, free from defects, and in good repair. Cutting equipment shall be kept sharp.
- D.** Each establishment shall have the following set up at all times during business hours:
 - 1. A covered, wet disinfectant container made of glass, stainless steel, or the type of container recommended by the manufacturer of the product it contains. The disinfectant shall be the type specified in R4-10-109(B). The solution shall be mixed and used according to manufacturer's instructions for dilution and immersion time. The container shall be large enough to completely immerse all combs, brushes, and other tools or implements used by licensees and shall contain the appropriate amount of solution for the number of items to be disinfected. The disinfectant shall be changed whenever necessary as determined by manufacturer's instructions or when visibly cloudy or contaminated, whichever first occurs. A separate covered container with wet disinfectant shall be maintained for each nail technician and aesthetician during nail technology and aesthetic procedures, large enough to completely immerse the contact areas of all nail technology and aesthetic tools or implements. The disinfectant shall be changed between clients.
 - 2. Covered containers that are disinfected and dry to store disinfected tools and implements.
 - 3. Written emergency procedures and a first-aid kit readily accessible to all people working in the establishment. The first-aid kit shall contain small bandages, gauze, and antiseptic.
 - 4. Hot and cold running water for work and sanitary purposes. Drinking water shall also be supplied for clients and employees that complies with state and local health department requirements.
 - 5. Garbage containers, which shall be emptied, cleaned, and disinfected daily. These containers shall not leak.
 - 6. Soiled linen containers that are ventilated. Clean towels, robes, or gowns shall be provided for each client and shall be laundered after every use. Laundered towels, robes, or gowns shall be stored in cabinets with tight-fitting doors, kept closed to protect linens from dust and dirt. All linens shall be disinfected during the wash cycle using detergent and bleach.
 - 7. Ventilation and air filtration system capable of four to 10 air changes per hour. Ventilation shall be designed to provide free flow of air to each room, in proportion to the size, use, and capacity of the room, to prevent the build up of emissions and particulates, to keep odors and diffusions from chemicals and solutions at a safe level, and to provide sufficient air circulation and oxygen. Ventilation may be by natural or mechanical means.
- E.** Plastic, rubber, natural bristles, nail files, clipper attachments, aesthetic sponges, wood, and pedicure bins shall be thoroughly cleaned, disinfected, and dried between each client, as follows:
 - 1. Pre-clean with soap and water to remove hair, filings, or other debris;
 - 2. Rinse thoroughly and pat dry with a clean towel;
 - 3. Disinfect according to R4-10-109(D)(1);
 - 4. Rinse and dry thoroughly; and
 - 5. Keep clean according to R4-10-109(D)(2).
- F.** All tools or implements shall be disinfected by complete immersion after each use. Tools or implements shall be removed from the disinfectant using tongs, baskets, or any manner that does not contaminate the disinfectant solution, and placed on a clean dry towel for air drying. Tools or implements that contact skin, but cannot be immersed into disinfectant because they are electrical, shall be wiped or sprayed with a type of disinfectant listed in R4-10-109(A) after each use.
- G.** Separate containers shall be used for soiled linens and for garbage. All clean linens shall be kept in a clean, closed cabinet or container. Only clean linens or new disposable linens shall be used on each client. Clients shall be protected from direct contact with shampoo bowls or items used to protect clients' clothing by the use of clean towels or protective neck strips.
- H.** Counters and work areas shall be disinfected after each client. Hair and nail clippings shall be discarded immediately after each client.
- I.** Each establishment shall have at least one restroom for employees' and clients' use. All rest rooms shall be kept clean and sanitary at all times and shall have a wash basin, hot and cold running water, and an adequate supply of toilet paper, liquid soap, and disposable towels. Rest rooms shall not be used for storing materials other than rest room supplies, unless they are placed in a locked cabinet.
- J.** Students, licensees, and employees shall thoroughly wash their hands and the exposed portions of their arms with soap

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and warm water, or use a wet disinfectant approved for use on the skin, before providing services to each client, after smoking, drinking, or using the rest room. Services shall not be performed by a licensee who has a contagious disease of a nature that may be transmitted by performing the service unless the licensee takes medically approved measures to prevent transmission of the disease. Services shall not be performed to an individual who has a contagious disease of a nature that may be transmitted by the performing of the services.

1. In the event of a wound, licensees and employees shall stop service and, before returning to service, clean the wound with an antiseptic solution, cover the wound with a sterile bandage, and, if the licensee's or employee's wound is in an area that could be covered by a glove or finger cover, wear a clean, fluid-proof protective glove or finger cover, or wear gloves on both hands if the wound is on the client.
 2. Licensees and employees shall wear, clean, fluid-proof protective gloves while performing any service if any bodily discharge is present from the licensee, employee, or client or if any discharge is likely to occur from the client because of services being performed.
 3. Blood-stained tissue, cotton, or other blood-contaminated material shall be placed in a sealed plastic bag and that plastic bag shall be placed into another plastic bag, which is labeled with a red or orange biohazard warning and discarded.
 4. All equipment, tools, and implements that have come in contact with blood or body fluids shall be disinfected before continued service by complete immersion in an Environmental Protection Agency registered, hospital grade, and tuberculocidal disinfectant that is mixed and used according to the manufacturer's directions.
- ~~K. All products that are used on more than one client shall be stored in a labeled, clean, closed container and dispensed using a disinfected spatula or in another manner that does not contaminate the remaining contents of the product. Once dispensed, a product may not be returned to the original container or used on another client.~~
- ~~L. All trays, floors, walls, chairs, headrests, footrests, tools, and other implements shall have a cleanable surface and shall be free from dust, dirt, and other foreign material. Headrests and footrests shall be covered with a clean towel or new disposable towel for each client. Shampoo bowls shall be kept clean and disinfected and drains shall be kept free running.~~
- ~~M. Product containers, including water, shall be labeled to identify contents. All chemicals shall be labeled and stored in compliance with state and local laws and manufacturer's instructions to ensure identification and protection against fires, fumes, contamination, or corrosion of containers. Corroded containers shall be immediately discarded.~~
- ~~N. Services shall be performed safely to protect the licensee and clients. Double bracing shall be used around the eyes, ears, lips, fingers, and toes. Clips or other implements shall not be placed in mouths or pockets.~~
- ~~O. Birds and animals, except for fish aquariums and seeing-eye or hearing-ear dogs, shall be prohibited in establishments.~~
- ~~P. Powder puffs, styptic pencils, lump alum, and the reuse of end papers and depilatory wax are prohibited. Dermaplane procedures, blades, knives, lancets, and any tool that invades the skin shall not be used in a salon or school. Nippers may be used only to remove loose cuticles. Only chemical peels containing a maximum of 2% phenol and 37 to 40% neutralized glycolic acid may be used.~~
- ~~Q. All establishments shall comply with federal and state occupational safety and health requirements.~~
- ~~R. A client's personal cosmetology implements or tools are subject to these rules.~~
- ~~S. All clients' hair and scalp shall be examined before hair services are provided to determine if any conditions are present that warrant shampooing before providing services, or whether to proceed with services.~~
- ~~T. Leather storage pouches shall not be used to store disinfected tools or implements.~~
- ~~U. Nail technology licensees and clients shall wash their hands with soap and warm water or wipe with disinfectant, or waterless hand cleanser approved for use on skin, prior to service. Prior to a pedicure, the client's feet shall be cleansed with soap and warm water or wiped with a disinfectant approved for use on skin.~~
- ~~V. Prior to aesthetics services, licensees shall wash their hands with soap and warm water or wipe with a disinfectant or waterless hand cleanser approved for use on skin.~~
- ~~W. Instructors in a school shall wash their hands with soap and warm water or wipe with a disinfectant approved for use on skin prior to checking student services on clients.~~
- ~~X. Sharp cosmetology tools and implements shall be sealed in a rigid, puncture-proof container and disposed of in a manner to keep licensees and clients safe.~~
- A. An establishment shall have and maintain the following minimum equipment and supplies:
1. Non-leaking, waste receptacles, which shall be emptied, cleaned, and disinfected daily;
 2. Ventilated containers for soiled linens including towels and capes;
 3. Closed, clean containers to hold clean linens including towels and capes;
 4. A covered, wet disinfectant container made of stainless steel or a material recommended by the manufacturer of the wet disinfectant that:
 - a. Is large enough to contain sufficient disinfectant solution to allow for the total immersion of tools and instruments;
 - b. Is set up with disinfectant at all times the establishment is open, and
 - c. Is changed as determined by manufacturer's instructions or when visibly cloudy or contaminated;
 5. An Environmental Protection Agency (EPA)-registered bactericidal, virucidal, fungicidal, and pseudomonacidal (for-

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- mulated for hospitals) disinfectant which shall be mixed and used according to manufacturer's directions on all tools, instruments, and equipment, except those that have come in contact with blood or other body fluids; and
6. An EPA-registered disinfectant that is effective against HIV-1 and Human Hepatitis B Virus or Tuberculocidal which shall be mixed and used according to the manufacturer's directions on tools, instruments, and equipment that come in contact with blood or other body fluids.
- B.** Procedure for disinfecting non-electrical equipment.
1. Non-electrical equipment shall be disinfected by cleaning with soap or detergent and warm water, rinsing with clean water, and patting dry; and
2. Totally immersing in the wet disinfectant required under subsection (A)(5) or (A)(6) following manufacturer's recommended directions.
- C.** Procedure for storage of tools and instruments.
1. A tool or implement that has been used on a client or soiled in any manner shall be placed in a properly labeled receptacle; and
2. A disinfected implement shall be stored in a disinfected, dry, covered container and isolated from contaminants.
- D.** Procedure for disinfecting electrical equipment, which shall be in good repair, before each use.
1. Remove all foreign matter;
2. Clean and spray or wipe with a disinfectant, compatible with electrical equipment, as required in subsection (A)(5) or (A)(6); and
3. Disinfect removable parts as described in subsection (B).
- E.** Tools, instruments and supplies.
1. All tools, instruments, or supplies that come into direct contact with a client and cannot be disinfected (for example, cotton pads, sponges, porous emery boards, and neck strips) shall be disposed of in a waste receptacle immediately after use;
2. Disinfected tools and instruments shall not be stored in a leather storage pouch;
3. A sharp cosmetology tool or implement that is to be disposed of shall be sealed in a rigid, puncture-proof container and disposed of in a manner that keeps licensees and clients safe;
4. An instrument or supply shall not be carried in or on a garment while practicing in the establishment;
5. Clips or other tools and instruments shall not be placed in mouths, pockets, or other unsanitized holders;
6. Pencil cosmetics shall be sharpened before each use;
7. All supplies, equipment, tools, and instruments shall be kept clean, disinfected, free from defects, and in good repair;
8. Cutting equipment shall be kept sharp; and
9. A client's personal cosmetology tools and instruments that are brought into and used in the establishment shall comply with these rules.
- F.** If there is a blood spill or exposure to other body fluids during a service, licensees and students shall stop the service and:
1. Before returning to service, clean the wound with an antiseptic solution;
2. Cover the wound with a sterile bandage;
3. If the wound is on a licensee's or student's hand in an area that can be covered by a glove or finger cover, the licensee or student shall wear a clean, fluid-proof protective glove or finger cover. If the wound is on the client, the licensee or student providing service to the client shall wear gloves on both hands;
4. Blood-stained tissue or cotton or other blood-contaminated material shall be placed in a sealed plastic bag and that plastic bag shall be placed into another plastic bag (double bagged), labeled with a red or orange biohazard warning, and discarded;
5. All equipment, tools, and instruments that have come in contact with blood or other body fluids shall be disinfected as discussed in subsections (A)(6) and (A)(B); and
6. Electrical equipment shall be disinfected as discussed in subsection (D).
- G.** Whirlpool foot spas or pedi bins used for pedicure services shall be cleaned as follows:
1. Between each client:
- a. All water shall be drained and all foreign matter removed from the foot spa or pedi bin;
- b. The surfaces and walls of the foot spa or pedi bin shall be cleaned with soap or detergent and rinsed with clean warm water;
- c. The surfaces and walls of the foot spa or pedi bin shall be disinfected with an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, virucidal, and pseudomonacidal (formulated for hospitals) efficacy used according to manufacturer's instruction;
- d. The foot spa or pedi bin shall be rinsed by filling with clear warm water and flushing for three minutes;
- e. The foot spa or pedi bin shall be wiped dry with a clean towel; and
- f. Foreign matter shall be removed from the screen, and the screen shall be disinfected.
2. At the end of each day:
- a. The screen shall be removed and all foreign matter trapped behind the screen removed; and
- i. The screen and inlet shall be washed with soap or detergent and a chlorine solution, consisting of 5% chlo-

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- rine bleach to 1 gallon warm water; or
 - ii. The screen shall be washed with soap or detergent and rinsed with clean, clear water then totally immersed in an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, virucidal, and pseudomonacidal (formulated for hospitals) efficacy used according to manufacturer's instruction; and
 - b. The system shall be flushed with low-sudsing soap and warm water for ten minutes then rinsed, drained, and allowed to air dry.
- 3. Weekly:
 - a. After the cleaning procedures in subsection (G)(1) are followed, the foot spa tub or pedi bin shall be filled with five gallons of warm water and four teaspoons of 5% bleach solution (a dose of 50 parts per million:0.64 oz.);
 - b. The bleach solution shall be circulated through the system for five to ten minutes;
 - c. The bleach solution shall be allowed to sit at least six hours; and
 - d. The system shall be drained and flushed.
- H. Personal cleanliness.
 - 1. A licensee or student shall thoroughly wash his or her hands with soap and warm water or any equally effective cleansing agent immediately before providing services to each client, before checking a student's work on a client, or after smoking, eating, or using the rest room;
 - 2. A licensee or student shall wear clothing and shoes;
 - 3. A client's skin upon which services will be performed shall be washed with soap and warm water or wiped with disinfectant or waterless hand cleanser approved for use on skin before a nail technology service, including a pedicure service, is provided; and
 - 4. A licensee or student shall wear clean, fluid-proof protective gloves while performing any service if any bodily discharge is present from the licensee, student, or client or if any discharge is likely to occur from the client because of services being performed.
- I. Disease and infestation.
 - 1. A licensee or student who has a contagious disease of a nature that may be transmitted, shall not perform services on a client until the licensee or student takes medically approved measures to prevent transmission of the disease; and
 - 2. Services shall not be performed on an individual who has a contagious disease that may be transmitted by the performing of the services on the individual.
- J. Client protection.
 - 1. A client's clothing shall be protected from direct contact with shampoo bowls or headrests by the use of clean linens, capes, robes, or protective neck strips;
 - 2. Infection control shall be maintained and services shall be performed safely to protect the licensee or student and client;
 - 3. Double bracing shall be used around a client's eyes, ears, lips, fingers, and toes; and
 - 4. A client shall receive a pre- and post-analysis that includes appropriate instructions for follow-up.
- K. Care and storage of linens including towels, robes, and capes.
 - 1. Clean linens shall be provided for each client and laundered after each use;
 - 2. Soiled linens shall be stored in a ventilated receptacle;
 - 3. Laundering shall include disinfecting linens by using detergent and bleach; and
 - 4. Clean linens shall be stored in closed containers or closets.
- L. Care and storage of products including liquids, creams, powders, cosmetics, chemicals, and disinfectants.
 - 1. All products shall be stored in a container that is clean and free of corrosion and labeled to identify contents, in compliance with state and local laws and manufacturer's instruction;
 - 2. All products containing poisonous substances shall be distinctly marked;
 - 3. When only a portion of a cosmetic product is to be used, the portion shall be removed from the container in a way that does not contaminate the remaining product; and
 - 4. Once dispensed, a product shall not be returned to the original container.
- M. Prohibited hazardous substances and use of products.
 - 1. An establishment shall not have on the premises cosmetic products containing hazardous substances that have been banned by the U.S. Food and Drug Administration (FDA) for use in cosmetic products, including liquid methyl methacrylate monomer and methylene chloride; and
 - 2. Product shall be used only in a manner approved by the FDA.
- N. Care of headrests, shampoo bowls, and treatment tables.
 - 1. Headrests of chairs and treatment tables shall be disinfected at least daily and treatment tables covered with a clean linen or paper sheet for each client;
 - 2. Shampoo bowls and neck rests shall be cleansed with soap and warm water or other detergent after each use and kept in good repair; and
 - 3. Shampoo neck rests shall be disinfected with a solution described in subsection (A)(5) or (A)(6) before each use.
- O. Prohibited devices or tools and invasive procedures.

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1. Except as provided in subsection (O)(2), all of the following devices and tools are prohibited from being present in or used in a salon:
 - a. A machine, instrument, or chemical that penetrates the dermis;
 - b. A laser hair-removal device;
 - c. Low-frequency, or low-power ultrasonic, or sonic device except one intended for skin cleansing, exfoliating, or product application; and
 - d. A razor-edged tool or instrument or other device designed to remove calluses or used to invade the dermis of the skin; and
 2. A salon providing an invasive procedure such as laser hair removal, or invasive microdermabrasion, or use of an invasive ultrasound or sonic device shall post a sign as required by R-4-10-111; and the procedure shall be performed under appropriate supervision of a medical doctor, nurse practitioner, or doctor of osteopathy as required by the relevant regulatory authority.
- P.** Skin peeling.
1. Only the non-living, uppermost layer of skin, known as the epidermis, may be removed by any method or means and only for the purpose of beautification;
 2. A skin removal technique or practice that affects the dermal layer of the skin is prohibited;
 3. Skin removal products shall not be mixed or combined except as required by manufacturer instructions and approved by the FDA; and
 4. Only commercially available products for the removal of epidermis for the purpose of beautification shall be used.
- Q.** Restricted use tools and instruments.
1. Nippers shall be used only to remove loose cuticles; and
 2. Pre-sterilized, disposal lancets shall be used only to dilate follicles and release sebaceous debris from the follicle.
- R.** Cleanliness and repair of the establishment shall be maintained according to the following guidelines.
1. After each client, hair and nail clippings shall immediately be discarded;
 2. All areas of the establishment, including storerooms and passageways, shall be well lighted, ventilated, and free from infectious agents;
 3. Floors, walls, woodwork, ceilings, furniture, furnishings, and fixtures shall be clean and in good repair;
 4. Shampoo bowls shall be clean and disinfected by using a disinfectant discussed in subsection (A)(5) or (A)(6) and drains shall be free running;
 5. Counters and all work areas shall be disinfected after each client by using a disinfectant discussed in subsection (A)(5) or (A)(6); and
 6. Waste or refuse shall be removed timely so there is no accumulation.
- S.** Building standards.
1. There shall be a direct entrance from the outside, not through living quarters, into the establishment;
 2. If connected to a residence, all passageways between the living quarters and the establishment shall have a door that remains closed during business hours;
 3. The establishment shall not be used for residential or other living purposes;
 4. The establishment shall have a restroom for employees' and clients' use during business hours that has a wash basin, running water, liquid soap, and disposable towels; is kept clean and sanitary at all times; is in close enough proximity to the salon to ensure safety for cosmetology procedures during use; and is open and available for use by employees and clients of the salon;
 5. Any excess material stored in a restroom shall be in a locked cabinet;
 6. The establishment shall have hot and cold running water;
 7. A mobile unit shall have sufficient water at all times; and
 8. The establishment shall have a natural or mechanical ventilation and air filtration system that provides free flow of air to each room, prevents the build-up of emissions and particulates, keeps odors and diffusions from chemicals and solutions at a safe level, and provides sufficient air circulation and oxygen.
- T.** General requirements.
1. The establishment shall have a first-aid kit that contains, at a minimum, small bandages, gauze, antiseptic, and a blood-spill kit that contains disposable bags, gloves, and hazardous waste stickers;
 2. No bird or animal, except fish aquariums and service animals, are allowed in the establishment; and
 3. The establishment shall comply with federal and state requirements.

ARTICLE 2. SCHOOLS

R4-10-207. Nail Technology School Requirements

- A.** ~~Schools~~ A school which that provide provides nail technology ~~300-hour~~ 600-hour training for students, 350-hour training for instructors, or both, shall provide the following minimum facilities, tools, instruments, equipment, supplies, and materials, in addition to ~~that those~~ required by R4-10-203 and R4-10-204:

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1. A work station to perform ~~of~~ nail technology services for the public for each student ~~enrolled~~, in attendance containing:
 - a. A nail technology table with a top 32" x 16" or larger;
 - b. A client chair;
 - c. A nail technology chair or stool;
 - d. A disinfected, covered container to store disinfected tools and ~~implements~~ instruments as specified by ~~R4-10-109~~ in R4-10-112;
 - e. A ~~receptacle~~ container with wet disinfectant as specified by ~~R4-10-109~~ in R4-10-112;
 - f. A container for ~~disinfected~~ soiled tools or ~~implements~~ instruments as specified in R4-10-112;
 - g. A ~~garbage~~ waste receptacle; ~~and as specified in R4-10-112; and~~
 - h. ~~A light;~~ A disinfectant for blood or body-fluid exposure as specified in R4-10-112.
 2. ~~One electric or battery operated nail drill for filing and buffing;~~
 3. One container large enough to completely immerse ~~both~~ two feet, for every five students in attendance during practical training;
 4. Nail products for acrylics, gels, tips, wraps, and polishing; and
 5. One ultraviolet light.
- B.** Each enrolled nail technology student shall have a training kit containing:
1. One simulated hand ~~or finger for practice training~~;
 2. Disinfected tools and instruments; including pusher, nipper, file or ~~porous~~ emery boards, tweezer, nail brush, and finger bowl; ~~buffers artificial nail products kit, wrap kit, two dappen dishes, polish kit, nail forms, and one brush product applicator to enable the student to perform nail technology;~~
 3. One covered container to store disinfected tools and implements as specified by ~~R4-10-109~~ R4-10-112;
 4. A container for ~~contaminated~~ soiled tools ~~or and implements~~ instruments as specified in R4-10-112; ~~and~~
 5. ~~One~~ A current instruction manual or textbook of nail technology; and Arizona cosmetology laws and rules; ~~;~~
 6. Artificial nail enhancement kit with remover, wrap kit, two dappen dishes, polish kit, nail forms, finishing tools and instruments, and one brush product applicator; and
 7. One electric nail file.

R4-10-208. Combined School Requirements

- A.** ~~The~~ A licensed school shall ensure that the following hours ~~are required~~ are taught to a student enrolled in the specific curriculum before allowing the student to graduate:
1. Aesthetics course - 600 hours,
 2. ~~Aesthetic~~ Aesthetics instructor course - 500 hours,
 3. Cosmetology course- 1600 hours,
 4. Cosmetology instructor course - 650 hours,
 5. Nail technology course- ~~300~~ 600 hours, and
 6. Nail technology instructor course - 350 hours.
- B.** ~~Schools~~ A school that ~~provide~~ provides training in all of the above courses shall have the minimum records, facilities, equipment, supplies, and materials required by:
1. R4-10-203,
 2. R4-10-204,
 3. ~~R4-10-205(A)(1)~~ R4-10-205 through (14) except subsection (A)(1) is one work station for each two aesthetics students enrolled in attendance,
 4. R4-10-206, and
 5. ~~R4-10-207(A)(1)~~ R4-10-207 through (5) except subsection (A)(1) is one work station for each two nail technology students enrolled in attendance.
- C.** ~~Schools~~ A school that ~~provide~~ provides the curriculum specified in subsections (A)(3), (A)(4), (A)(5), and (A)(6) only shall have the minimum records, facilities, equipment, supplies, and materials required by:
1. R4-10-203,
 2. R4-10-204,
 3. R4-10-206, and
 4. ~~R4-10-207(A)(1)~~ R4-10-207 through (5) except subsection (A)(1) is one work station for each two nail technology students enrolled in attendance.
- D.** ~~Schools~~ A school that ~~provide~~ provides the curriculum as specified in subsections (A)(1), (A)(2), (A)(3), and (A)(4) only shall have the minimum records, facilities, equipment, supplies, and materials required by:
1. R4-10-203,
 2. R4-10-204,
 3. ~~R4-10-205(A)(1)~~ R4-10-205 through (14) except subsection (A)(1) is one work station for each two ~~aesthetic~~ aesthetics students enrolled in attendance, and
 4. R4-10-206.

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- E. ~~Schools~~ A school that ~~provide~~ provides the curriculum as specified in subsections (A)(1), ~~(A)(2)~~, ~~(A)(5)~~ and ~~(A)(6)~~ only shall have the minimum records, facilities, equipment, supplies, and material required by:
1. R4-10-203,
 2. R4-10-204,
 3. R4-10-205, and
 4. R4-10-207.

ARTICLE 3. STUDENTS

R4-10-302. Instructor Curriculum Required Hours

- A. ~~The following number of hours shall be completed by each student in an instructor course of aesthetics, cosmetology, or nail technology. Each student in an aesthetics, cosmetology, or nail technology instructor course shall complete the number of hours listed in Table 1:~~

Subject	Aesthetics	Cosmetology	Nail Technology
1. Orientation	16	16	16
2. Theory, principles, or methods of teaching	200	250	125
3. Practical demonstrations	100	150	80
4. Conducting theory classes	40	60	30
5. Clinic floor work	100	130	65
6. Arizona cosmetology laws and rules	10	10	5
7. Record preparation	10	10	5
8. Evaluation and unassigned	24	24	24

Table 1. Instructor Curriculum (in hours)

<u>Subject</u>	<u>Aesthetics</u>	<u>Cosmetology</u>	<u>Nail Technology</u>
<u>1. Orientation and Arizona laws and rules</u>	<u>8</u>	<u>8</u>	<u>8</u>
<u>2. Theory, Preparation, and Practice Curriculum Development Developing and Using Educational Aids Presentation Principles (Practical and Written) Classroom Management Evaluation, Assessment, and Remediation Methods (Practical and Written) Diversity in learning (including cultural) Methods of Teaching Professional Development (including ethics) Alternative Learning [see subsection (B)]</u>	<u>405</u>	<u>405</u>	<u>270</u>
<u>3. Lab (clinic) oversight</u>	<u>87</u>	<u>237</u>	<u>72</u>
<u>4. Total Hours</u>	<u>500</u>	<u>650</u>	<u>350</u>

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- ~~B.~~ No more than 20% of the total training hours shall be spent checking clinical floor work.
- ~~C.~~ A maximum of 10% of the hours required for any subject in a course may be spent on another subject in that course. The actual hours spent on each subject in a course shall not be less than 90% of the number of hours required in subsection (A). This does not apply to evaluation and unassigned.
- ~~D.~~ B. Curriculum hours for theory, principles, or methods of teaching may be satisfied by credits in part by completing a course at an accredited college or university described in R4-10-101(15)(c) and (d), for no more than nine credit hours for cosmetology or aesthetics and no more than six credit hours for nail technology and encompassing the subjects listed under Theory, Preparation, and Practice in subsection (A) obtained from an accredited college or university with each college credit hour equaling no more than 30 clock hours.
- ~~E.~~ C. All instruction given by a student instructor shall be under the direct supervision and observation of a licensed instructor.
- ~~F.~~ D. ~~Student A student~~ instructors instructor shall be counted as a ~~students student~~ for purposes the purpose of determining the maximum allowed ratio of ~~20 40~~ students during a theory class and 20 students during a lab or clinic for each ~~teacher~~ licensed instructor in the school.
- ~~G.~~ E. ~~No A~~ student instructor shall not instruct students or check student services performed on the public until the student instructor has received at least ~~120 80~~ hours of basic instructor training.

R4-10-303. ~~Aesthetic~~ Aesthetics Curriculum Required 600 Hours

- ~~A.~~ The following number of hours shall be completed by each student in an aesthetics course:
 - 1. Theory of aesthetics, Arizona aesthetician laws and rules, 75 hours;
 - 2. Practical aesthetics and practical theory involving all skin types:
 - a. Consultation and analysis, 25 hours;
 - b. Preparation and cleansing, 25 hours;
 - c. Massage, 75 hours;
 - d. Manual facial, 75 hours;
 - e. Electrical facial, 100 hours;
 - f. Packs and masks, 30 hours;
 - g. Light therapy, 10 hours;
 - h. Cosmetics application, 75 hours;
 - i. Physical and chemical depilatories, 30 hours;
 - j. Artificial eyelash application, 20 hours;
 - k. Creative preference, 25 hours; and
 - l. Disinfection procedures, 35 hours.
 - 3. The total received shall be at least 600 hours.
- ~~B.~~ No aesthetics school shall receive remuneration for students performing clinical services to the public until the student has received 120 hours of basic training.
- A. Each student in an aesthetics course shall complete the following curriculum:
 - 1. Theory of aesthetics, infection control, anatomy, physiology and histology of the body, diseases and disorders, and Arizona cosmetology laws and rules; and
 - 2. Clinical and laboratory aesthetics including theory that involves all skin types:
 - a. Principles and practices of infection control and safety;
 - b. Recognition of diseases and the treatment of disorders of the skin;
 - c. Interpersonal skills and professional ethics;
 - d. Clinical and laboratory practice that includes face and body;
 - e. Morphology and treatment of skin, including face and body, by hand and machine;
 - f. Product pharmacology and chemistry interaction, formulation, composition, and hazards;
 - g. Aesthetics machines, tools, and instruments and their related uses;
 - h. Alternative skin technology;
 - i. Pre- and post-client consultation, documentation, and analysis;
 - j. Spa body modalities;
 - k. Exfoliation modalities;
 - l. Body and face massage and manipulations;
 - m. Body and facial hair removal except by electrolysis or laser;
 - n. Cosmetic enhancement applications; and
 - o. Required industry standards and ecology, including monitor duties.
- B. An aesthetics school shall not receive remuneration for a student performing clinical services to the public until the student has received at least 120 hours of aesthetics training; and
- C. Each student shall be evaluated for progress and provided suggested remediation of deficiencies.

R4-10-304. Cosmetology Curriculum Required 1600 Hours

- ~~A.~~ The following number of hours shall be completed by each student in a cosmetology course:

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1. Theory of cosmetology, Arizona cosmetology laws and rules, 200 hours;
 2. Practical cosmetology and practical theory, involving all hair and skin types:
 - a. Monitor duties, salesmanship, ethics, and salon management, 35 hours;
 - b. Chemical hair restructuring, including permanent waving and chemical hair relaxing, specifically thioglycolate and sodium hydroxide, 230 hours;
 - e. Hair coloring, including tinting and bleaching, 230 hours;
 - d. Haircutting, 230 hours;
 - e. Hairstyling, pressing, thermal curling, and waving, 230 hours;
 - f. Facials and makeup, including massage and physical and chemical depilatories, 100 hours;
 - g. Massage, 100 hours;
 - h. Manicuring, pedicuring, sculpture nails, extensions, wraps, overlays, and related services, 75 hours;
 - i. Shampooing, conditioning, re-conditioning, rinse application, and chemical removal, 50 hours;
 - j. Scalp treatment and brushing, 20 hours;
 - k. Electricity and light therapy as related to the practice of cosmetology, 10 hours;
 - l. Creative preference, 40 hours; and
 - m. Disinfection procedures, 50 hours.
 3. The total number of hours received shall be at least 1600.
- B.** No cosmetology school shall receive remuneration for students performing any clinical services, except shampooing, to the public until the student has received at least 300 hours of cosmetology training.
- A.** Each student in a cosmetology course shall complete the following curriculum:
1. Theory of cosmetology, infection control, anatomy, physiology and histology of the body, electricity, diseases and disorders, and Arizona cosmetology laws and rules; and
 2. Clinical and laboratory cosmetology including theory that involves nails, hair, and skin:
 - a. Principles and practices of infection control and safety;
 - b. Recognition of diseases and the treatment of disorders of the hair, skin, and nails;
 - c. Morphology and treatment of hair, skin, and nails;
 - d. Interpersonal skills and professional ethics;
 - e. Product pharmacology and chemistry interaction, formulation, composition, and hazards;
 - f. Cosmetology machines, tools, and instruments and their related uses;
 - g. Chemical texturizing;
 - h. Changing existing hair color;
 - i. Hair and scalp care;
 - j. Fundamentals of hairstyling including braiding and extensions;
 - k. Body, scalp, and facial massage and manipulations;
 - l. Hair cutting fundamentals;
 - m. Fundamental aesthetics of the body and face;
 - n. Fundamentals of nail technology;
 - o. Clinical and laboratory practice that includes hair, skin, and nails;
 - p. Alternative hair, skin, and nail technology;
 - q. Pre- and post-client consultation, documentation, and analysis;
 - r. Body and facial hair removal except by electrolysis or laser;
 - s. Cosmetology technology; and
 - t. Required industry standards and ecology, including monitor duties.
- B.** A cosmetology school shall not receive remuneration for a student performing any clinical services, except shampooing, to the public until the student has received at least 300 hours of cosmetology training; and
- C.** Each student shall be evaluated for progress and provided suggested remediation of deficiencies.

R4-10-305. Nail Technology Curriculum Required 600 Hours

- A.** The following number of hours shall be completed by each student in a nail technology course. Each student in a nail technology course shall complete the following curriculum:
1. Theory of manicuring, Arizona nail technology laws, and rules, 50; Theory of nail technology; infection control; diseases and disorders of the nails and skin; anatomy; physiology and histology of the limbs, nails, and skin structures; and Arizona state cosmetology laws and rules; and
 2. Practical manicuring and practical theory: Clinical and laboratory nail technology including theory that involves nails, skin, and limbs:
 - a. Extensions, wraps, and overlays, 50 hours;
 - b. Nail sculpturing, 80 hours;
 - e. Manicuring, 35 hours;
 - d. Pedicuring, 30 hours;
 - e. Massage on hands, arms, legs, and feet, 10 hours;

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- ~~f. Monitor duties, 10 hours;~~
 - ~~g. Creative preference, 10 hours; and~~
 - ~~h. Disinfection procedures, 25 hours.~~
 - a. Principles and practices of infection control and safety;
 - b. Recognition of diseases and the treatment of disorders of the nail and skin;
 - c. Massage and manipulation of the limbs;
 - d. Interpersonal skills and professional ethics;
 - e. Product pharmacology and chemistry interaction, formulation, composition, and hazards;
 - f. Nail technology machines, tools, and instruments and their related uses;
 - g. Clinical and laboratory practice that includes nails, skin, and limbs;
 - h. Pre- and post-client consultation, documentation, and analysis;
 - i. Manicuring, including use of nippers;
 - j. Pedicuring, including use of nippers;
 - k. Artificial nail enhancements (application and removal);
 - l. Alternative nail technology;
 - m. Electric file use;
 - n. Pedicure spa modalities;
 - o. Exfoliation modalities on limbs or the body; and
 - p. Required industry standards and ecology, including monitor duties.
- B. ~~No~~ A nail technology school shall not receive remuneration for students performing clinical services to the public until the student has received at least 80 hours of nail technology; and
- C. Each student shall be evaluated for progress and provided suggested remediation of deficiencies.

R4-10-306. Curriculum Curricula Hours

- A. Hours of training received in an ~~aesthetic~~ aesthetics, cosmetology, or nail technology course ~~shall do~~ not apply toward receiving an instructor's license.
- B. Hours of training received in an instructor course ~~shall do~~ not apply toward receiving an aesthetician, cosmetologist, or nail technician license but ~~shall may~~ apply toward reactivation of an aesthetics, cosmetology, or nail technology license if the instructor hours are received after inactive status occurs.
- C. The following hours ~~shall be applied~~ apply toward licensing:
1. ~~25%~~ 30% of the hours of training received in a nail technology course toward a cosmetologist license;
 2. 30% of the hours of training received in an aesthetics course toward a cosmetologist license;
 3. ~~7%~~ 15% of the hours of training received in a cosmetology course toward a nail technician license;
 4. 15% of the hours of training received in a cosmetology course toward an aesthetician license;
 5. 50% of the hours of training received in a barber course toward a cosmetologist license;
 6. 100% of the hours of training received by a licensed cosmetologist in a nail technology instructor course toward an aesthetics instructor ~~license~~ course; however, the remaining required hours shall be received in an aesthetics or cosmetology school;
 7. 100% of the hours of training received by a licensed cosmetologist in a nail technology instructor course toward a cosmetology instructor ~~license~~ course; however, the remaining required hours shall be received in a cosmetology school;
 8. 100% of the hours of training received by a licensed cosmetologist in an aesthetics instructor course toward a cosmetology instructor ~~license~~ course; however, the remaining required hours shall be received in a cosmetology school; and
 9. 100% of the ~~barber instructor~~ hours of training received in a barber instructor course toward a cosmetology instructor ~~license~~ course; however, the remaining required hours shall be received in a cosmetology school. One year of licensed barber experience is the same as one year of licensed cosmetology experience for the purpose of qualifying for the cosmetology instructor examination as specified by A.R.S. § 32-531.
 10. Hours transferred to another course shall ~~only~~ be used only once.
- D. At the completion of a course, the cumulative hours for students shall, at a minimum, conform to R4-10-301, R4-10-302, R4-10-303, R4-10-304, R4-10-305, and R4-10-306 as applicable.
- E. Infection control, disinfection procedures, and safety issues shall be taught with every subject and every procedure.
- F. Alternative learning hours are hours that a school may authorize to enable a student to pursue knowledge of cosmetology in an alternative format or location other than a salon. A school shall not credit a student with more than 20% of the total hours required for graduation, earned during enrollment at the school, as alternative learning hours.

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TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 19. BOARD OF NURSING

[R05-390]

PREAMBLE

1. Sections Affected

R4-19-801
R4-19-802
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Rulemaking Action

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2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 32-1606(A)(1), (B)(2), (B)(8), and (B)(11)

Implementing statutes: A.R. S. §§ 32-1601(7), (10) and (16); 32-1606(B)(16); 32-1609(C); 32-1643(A)(11) and (12); 32-1645; 32-1646; 32-1647; 32-1648; 32-1649; 32-1663(A) (B), (C), (F), and (G); 32-1663.01; 32-1664

3. The effective date of the rules:

December 5, 2005

4. A list of all previous notices appearing in the *Register* addressing the final rule:

Notice of Rulemaking Docket Opening: 10 A.A.R. 1626, April 23, 2004

Notice of Proposed Rulemaking: 11 A.A.R. 1386, April 15, 2005

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Pamela K. Randolph RN, MS
Nurse Practice Consultant/Education

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6. An explanation of the rule, including the agency's reason for initiating the rule:

The Board is initiating rulemaking on Article 8 as part of its strategic plan to improve regulatory effectiveness, and to clarify and update certified nursing assistant rules. The Board strives to adopt and enforce rules that reflect current standards for practice and education. Since the adoption of Article 8, the Board has become aware of emerging issues concerning nursing assistant education and practice. The current rules, while adequate for enforcement and public protection, need additional clarity regarding Board standards for both consumers and nursing assistants. Additionally, several provisions of the current rules may create unnecessary regulatory barriers or are insufficient to ensure effective certified nursing assistant (CNA) education and safe practice.

In 1992, the Arizona legislature, in A.R.S. § 32-1606 (B)(11), authorized the Board to administer the federal requirements in 42 C.F.R. 483 as they pertain to certified nursing assistants and certified nursing assistant programs. Because the federal requirements pertain to nursing assistants working in long term care facilities, the rules and amendments reflect the long-term care environment where patients are referred to as "residents". The Board is aware that certified nursing assistants also work in other settings. The Board has maintained a registry of certified nursing assistants and approved nursing assistant programs since 1992.

Rule changes are summarized below.

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R4-19-801

The Board is amending this rule to clarify the expectations for nursing assistant programs. Subsection (A) defines traineeship, which is a modification of the preceptorship option in the current rules. Enhancements to subsection (B) include test re-take policy rules, standards for faculty supervision of students in the clinical setting, and a non-traditional option for an experienced nursing assistant to demonstrate competency. These changes are expected to provide clearer standards, yet allow for innovation and programmatic control of educational decisions. Subsection (C) was modified to more accurately reflect the role and duties of the program coordinator and instructor. Subsection (D) delineates the amount and type of clinical experiences that are appropriate for a CNA program. The Board expects a CNA program to provide clinical experiences in long-term care settings except where such an experience is geographically unfeasible and a comparable alternative experience exists. The Board, upon the advice of CNA educators, is also specifying the supplies and equipment needed by a CNA program to simulate patient care in a practice laboratory setting. The Board believes that a nursing assistant student must demonstrate competency in patient care skills within a safe, controlled, realistic laboratory setting before performing the skills on a resident. The Board added subsection (E) to this rule to require a program to notify the Board when making significant changes to a program. This provision is to ensure that programmatic changes are consistent with rule requirements.

R4-19-802

Upon the advice of CNA educators, the Board amended this rule to clarify the curriculum elements needed in a CNA program. The federal requirements (42 C.F.R. 483.152) are also included. These amendments will enhance the understanding of and compliance with both state and federal law by incorporating all elements into one regulation. The Section further explains what types of documentation are needed to develop a curriculum, such as learner-centered objectives and a content outline. These have been lacking in many programs in the past. Standards requiring a current nursing assistant textbook have also been included. The length of didactic, clinical instruction, and traineeships are also specified in this Section.

R4-19-803

Amendments were made in this Section to improve clarity and understandability. A significant feature of this Section allows the Board to grant one-year initial approval to a CNA program without a site visit. This is consistent with federal regulations and will allow the Board to approve programs in remote rural areas or with ambitious time-frames without the delay involved in conducting an onsite visit.

R4-19-804

This Section was amended to require renewing programs to submit of a full set of documents. Previously, only changes to curriculum, policies, and course instructors were required. It was discovered that many programs did not adequately track changes and had, in fact, changed without including changes in the renewal application. Due to the rapid turnover rate of instructors and coordinators in CNA programs, it was determined that it would be more efficient if all documents were provided for each renewal period. Upon receipt of the documents, Board staff may determine, based on the rule requirements, whether an onsite visit or a telephone visit to the entity offering the program is warranted. The Board is also requiring that renewing programs have at least one graduate who takes the manual skills and written competency examinations. There are many approved programs that graduate large numbers of students who never certify because they either take the course as a pre-requisite for a nursing program or do not need to be certified for their job. The Board believes it has no regulatory role and is exceeding the intent of the statute, rule, and federal regulations in approving such programs. Subsection (D) allows the Board to impose a moratorium period after denial. Programs have mechanisms to avoid a denial including withdrawal of the application under R4-19-104 (E) or compliance with the rules. Previously there were no adverse consequences to denial and a denied program could re-apply under time-frame rules and be reviewed again in 90 days, imposing an administrative burden upon the Board.

R4-19-805

This Section clarifies the grounds for rescission of approval of a nursing assistant program. Causes for rescission, in addition to violation of other Sections of this Article, include: loaning program approval to another entity, conducting a nursing assistant training program before Board approval, or conducting a nursing assistant program after the expiration of approval unless without applying for re-approval. As in the previous rule, the period of rescission is 2 years. This is consistent with sanctions imposed upon a facility for a violation of federal regulations; the facility is prohibited from conducting a nursing assistant program for 2 years.

R4-19-806

Minor changes were made in this Section to be consistent with current application policies of the Board.

R4-19-807

Amendments to this Section provide a mechanism for persons who completed a nursing assistant program of less than 120 hours to meet qualifications for licensure through work experience as a CNA. This will reduce the perceived barriers and frustration experienced by current applicants who must either re-train or seek a preceptorship at a long-term care facility if their program was less than 120 hours. Preceptorships for endorsement applicants are difficult to locate. Federal regulations require a minimum 75-hour program. Nursing assistants that were certified before the 120

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hour-requirement must have performed a minimum of 160 hours of nursing assistant duties in the past 2 years to renew or qualify for endorsement.

R4-19-808

The period for a temporary certificate was reduced to three months. The Board receives very few applications for temporary certificate because of the timely processing of fingerprints by the FBI. Three months is an adequate time-frame to complete the application process and receive fingerprint results for the overwhelming majority of temporary certificate applicants.

R4-19-809

Formatting and grammatical changes were made to this Section. Changes consistent with current application procedures were also made. The Board specified that nursing assistants must engage in nursing assistant duties for at least 160 hours every 2 years to qualify for renewal of a CNA certificate. This is consistent with one-month full time employment and is considered by the Board to be the minimal amount of practice needed to maintain skills and protect the public.

R4-19-810

Formatting and grammatical changes were made to this Section.

R4-19-812

Formatting and grammatical changes were made to this Section.

R4-19-813

Formatting and grammatical changes were made to this Section.

R4-19-814

This Section clarifies those acts by CNAs, which are or could be detrimental to the health, safety, and welfare of the public. The Board receives many complaints of emotional and financial harm to vulnerable residents that revolve around a CNA's inability to recognize role boundaries. Boundary violations and dual relationships are clearly defined and prohibited when the patient is at risk for exploitation or abuse. Other amendments to this Section include: requiring patient record entries and employment applications to be truthful, describing failure to cooperate with the Board, incorporating the provisions of A.R.S. § 32-3208, and reporting felony convictions.

- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

- 8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

- 9. A summary of the economic, small business, and consumer impact:**

The Arizona State Board of Nursing licenses approximately 57,000 registered nurses, and 10,000 licensed practical nurses and certifies approximately 25,000 nursing assistants. Additionally the Board oversees 20 nursing programs and approximately 150 nursing assistant programs. In fiscal year 2004, the Board received 4036 applications for CNA by exam and 925 applications by endorsement. There were 752 complaints opened against certified nursing assistants. The Board processed 40 renewal and 12 initial CNA program applications.

This rulemaking is not expected to have a direct economic impact on any regulated entity. The Board does not charge a fee for nursing assistant program approval; funds are received from the Department of Health Services (DHS) and The Arizona Health Care Cost Containment System (AHCCCS) to cover some of the costs.

The Board does not anticipate any increased costs to applicants for certification.

Nursing assistant programs may incur some indirect costs related to this rulemaking. Due to the more specific curriculum requirements, some nursing assistant programs may have to adjust their schedules to provide 60 hours of didactic instruction or seek contracts with long-term care facilities for clinical instruction. Nursing assistant programs that have not developed a curriculum will need to formulate objectives, content outlines, and learning activities consistent with sound educational practices. Nursing assistant programs may also incur an additional expense of copying and preparing documents to submit for renewal. All these expenses are outweighed by the benefit to students and consumers of a well-developed curriculum, adequate didactic instructional time, and appropriate clinical experiences.

If a nursing assistant program in a remote or rural area does not currently require a long-term care clinical experience, nursing assistant students may incur additional travel expenses to reach a clinical site. The travel distance is limited to a 50-mile radius if there are other suitable clinical experiences within the area. There are only two programs, both

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located in Page, that do not have suitable long-term care or other clinical experiences within a 50-mile radius. Currently, those students travel to Flagstaff for clinical experiences in long-term care.

A direct economic impact is not anticipated on the regulated nursing assistant population. Nursing assistants will benefit from the information and guidance provided by the increased clarity of the standards. The endorsement options for nursing assistants whose training programs were less than 120 hours should alleviate the current frustration experienced by applicants who need preceptorships or re-training under current rules.

The Board is expected to benefit from the proposed rulemaking. The ability to conduct a telephonic conference visit rather than an in-person visit of a nursing assistant program will decrease administrative costs associated with CNA program renewal. Allowing the Board to approve a program for one year without a site-visit will decrease administrative costs and allow the programs to begin in a timely manner. Staff time may be utilized more efficiently when the reviewing consultant is able to examine all current documents in renewal applications before the site visit, instead of examining years of documents to verify rule compliance or requiring that documents be copied at the time of the site visit.

The public is expected to benefit in a number of ways. Clarity in standards of conduct will serve to inform the public, employers, and nursing assistants of the expected parameters of nursing assistant practice. An endorsement applicant, who utilizes work experience to meet some training requirements, will be employed more rapidly and be available to meet resident or patient needs in a time of health care personnel shortages. Approving new programs for a year with a paper review will allow the Board to respond quickly to facility training needs. The enhanced standards for educational programs will assist programs to better educate nursing assistants to provide safe, effective care.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Due to concerns expressed by Board staff, R4-19-815 was deleted from the final rulemaking package. The definition of traineeship was moved to R4-19-801(A) to improve understanding of the rule package.

To ensure consistency with R4-19-403, the unprofessional conduct rules for licensed nursing practice, R4-19-814(13) was changed from, "Theft from a patient or resident, a patient's or resident's family, an employer, a coworker, or any member of the public" to "Removing, without authorization, any money, property, or personal possessions, or requesting payment for services not performed from a patient, resident, employer, co-worker, or member of the public".

Various technical, formatting, and grammatical changes were made at the suggestion of G.R.R.C. staff to improve clarity of the rules.

11. A summary of the comments made regarding the rule and the agency response to them:

No members of the public testified at the open hearing and no written comments were received. Board staff members offered comment on proposed R4-19-815. Due to concerns expressed over the proposed changes it was decided to eliminate R4-19-815 from the rulemaking package.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously made as an emergency rule?

No.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 19. BOARD OF NURSING

ARTICLE 8. CERTIFIED NURSING ASSISTANTS

Section

- | | |
|------------|------------------------------------------------------------------------------------------------------------------------|
| R4-19-801. | Standards for Nursing Assistant Training Programs |
| R4-19-802. | Standardized Curriculum |
| R4-19-803. | <u>Initial</u> Approval of Nursing Assistant Training Programs |
| R4-19-804. | Renewal of Approval of Nursing Assistant Training Programs |
| R4-19-805. | Deficiencies and Rescission of Program Approval, Voluntary Termination, <u>Disciplinary Action</u> , and Reinstatement |
| R4-19-806. | Nursing Assistant Certification by Examination |

Arizona Administrative Register / Secretary of State
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- R4-19-807. Nursing Assistant Certification by Endorsement
- R4-19-808. Temporary Certificate
- R4-19-809. Certified Nursing Assistant Certificate Renewal
- R4-19-810. Certified Nursing Assistant Register
- R4-19-812. Change of Name or Address
- R4-19-813. Performance of Nursing Assistant Tasks
- R4-19-814. Standards of Conduct for Certified Nursing Assistants

ARTICLE 8. CERTIFIED NURSING ASSISTANTS

R4-19-801. Standards for Nursing Assistant Training Programs

- A.** For the purposes of this Article “traineeship” means a clinical experience in which a nursing assistant student works with a facility staff member under the supervision of a licensed nurse to provide care for residents without an instructor onsite.
- A B.** Organization and administration
1. A nursing assistant training program shall provide a description of the program that includes ~~purpose, the length of the program, number of hours of clinical and classroom instruction, and program goals, and objectives, and meets~~ consistent with federal, state, and if applicable, private postsecondary requirements. The program shall provide a description ~~must be that is~~ consistent with the purpose, goals, and objectives of a parent institution, if any.
 2. A nursing assistant training program ~~utilizing that uses~~ external clinical facilities shall ~~have execute~~ a written agreement ~~between the program and with~~ each external clinical facility ~~that: The agreement shall define the rights and responsibilities of the program and the clinical facility, including agreements on the role and authority of the governing bodies of both the clinical facility and the program.~~
 - a. Defines the rights and responsibilities of both the clinical facility and the program.
 - b. Defines the role and authority of the governing bodies of both the clinical facility and the program.
 - c. Allows the program instructor the right to select learning experiences for students, and
 - d. Contains a termination clause that provides sufficient time for enrolled students to complete the clinical experience upon termination of the agreement.
 3. A nursing assistant training program shall ~~have promulgate~~ written policies and procedures that are consistent with ~~its~~ the policies and procedures of the parent institution, if any, and contain an effective and review date for each policy or procedure. The program shall provide a copy of its policies and procedures to each student on or before the first day the student participates in the program, ~~and that meet federal, state, and if applicable, private postsecondary requirements. The program shall provide a regular schedule for the review of policies and procedures. The program shall develop and adhere to policies and procedures shall include in the following areas:~~
 - a. Student attendance ensuring that a student receives 120 hours of instruction or the equivalent of 120 hours;
 - b. Student grading, including program completion criteria; requiring that a student either attain at least 75% on each theoretical exam, or 75% on a comprehensive theoretical exam;
 - c. Test retake, if retake tests are allowed, informing students that a retake test:
 - i. Addresses the competencies tested in the original test.
 - ii. Contains different items from the original test, and
 - iii. Is documented in the student’s record;
 - e-d. Student record maintenance including information regarding records retention, retention period, records location, and documents required under subsections (D)(5) and (6);
 - e. Instructor supervision of students in the clinical area, providing for:
 - i. A method to contact the instructor that ensures the instructor is available as needed;
 - ii. Instructor rounds for each student according to patient or resident need and student ability;
 - iii. Direct observation and documentation of student performance, consistent with course and clinical objectives; and
 - iv. Only activities related to the direct supervision of students during the clinical session.
 - ~~d-f.~~ Student fees and financial aid, if any;
 - e-g. Student rights and responsibilities Dismissal, advanced placement consistent with subsection (B)(4), and withdrawal policies; and
 - f-h. Student grievance policy, including a chain of command for grade disputes;
 - i. Admission requirements, including any criminal background or drug testing required;
 - j. Program completion criteria; and
 - k. Notification of Board requirements for certification, including the criminal background check requirement, before enrolling a student.
 4. In lieu of requiring completion of all course hours specified in R4-19-802, a nursing assistant training program may develop a policy that allows a student with at least one year full-time nursing assistant experience to demonstrate

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attainment of course objectives and clinical competencies consistent with curriculum requirements in R4-19-802(C). The program shall evaluate competency through a written comprehensive examination, skills testing, and at least 16 hours of clinical practice in a long term care facility directly supervised by the registered nurse instructor. A program that develops a policy under this subsection shall submit a copy of the policy to the Board.

5. Within 15 days of program completion, a nursing assistant training program shall provide a certificate of completion document, which contains the following, to each student who has completed the program:
 - a. The name and classroom location of the program;
 - b. The number of classroom and clinical hours in the program;
 - c. The number of traineeship hours, if any;
 - d. The end date of the program;
 - e. The program number, if known; and
 - f. The signature of the program coordinator, instructor, or the supervisor of the program coordinator or instructor.
6. A nursing assistant training program shall execute and maintain under subsection (D) (5) and (6) the following documents for each student:
 - a. A skills check-off list, containing documentation of competency of the nursing assistant skills in R4-19-802(C), and
 - b. A program evaluation form, containing the student's responses to questions about the quality of the classroom and clinical experiences during the training program.

B C. Program coordinator and instructor qualifications and responsibilities

1. A program coordinator shall:
 - a. Hold a current, unencumbered, Arizona professional registered nurse license that is active and in good standing under A.R.S. Title 32, Chapter 15; and
 - b. Have Possess at least two years of professional nursing experience with at least one year of which is in a the provision of long-term care facility services.
2. A director of nursing in a long term care facility-based program health care facility may assume the administrative responsibility and accountability role of a program coordinator for a nursing assistant training program based in the facility but shall not engage in classroom or clinical teaching in that program function as a program instructor.
3. A program coordinator's responsibilities include the following coordinator shall:
 - a. Planning, implementing, Supervise and evaluating evaluate the program;
 - b. Securing qualified instructors, if applicable Ensure that instructors meet Board qualifications; and
 - c. Making available Ensure that the written policies in subsection (B) admission and program completion requirements in written form to are available to students prior to on or before admission to the program the first day of the program;
 - d. Coordinating classroom and clinical sites and activities;
 - e. Evaluating and supervising students and instructors; and
 - f. Providing documentation of program completion to a student within 10 days of program completion.
4. A program instructor shall:
 - a. Hold a current, unencumbered, Arizona professional nurse registered nurse license that is active and in good standing under A.R.S. Title 32, Chapter 15; and
 - b. Meet Possess one or more of the following requirements:
 - i. Have completed Credit for a course in on teaching adults,
 - ii. Have one One year's year of experience in teaching adults, or
 - iii. Have one year's One year of experience in supervising nursing assistants.
5. A program instructor's responsibilities for classroom and clinical instruction, excluding hours spent in a preceptorship, include the following For classroom and clinical, excluding hours spent in a traineeship, a program instructor shall:
 - a. Participating in the planning of Plan each learning experience; ;
 - b. Ensuring that course objectives Accomplish course goals and lesson objectives are accomplished; ;
 - c. Requiring a grade of 75% or greater on all each theoretical examinations examination, test or quiz Enforce a grading policy that meets or exceeds the requirements of subsection (B)(3)(b);
 - d. Requiring a passing grade Require satisfactory performance of all critical elements for satisfactory completion of all skills evaluations of each nursing assistant skill under R4-19-802(C) ; ;
 - e. Ensuring that students do not perform activities for which they have not received instruction and in which they have not been found competent, Prevent a student from performing an activity unless the student has received instruction and been found to competently perform the activity;
 - f. Supervising students giving Supervise any student who provides care to clients in clinical areas, consistent with the requirements of subsection (B)(3)(c); ;
 - g. Being Be present in the classroom at least 75% of the time during all instruction; ; and

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h. ~~Supervising~~ Supervise health care professionals and clinical instructors who assist in providing program instruction.

6. A certified or licensed health care professional ~~may~~ shall not assist the program instructor ~~if~~ unless the health care professional has at least one year of experience in the field of licensure or certification and the learning activity is within the scope of practice of the licensee or certificate holder. A certified nursing assistant shall not provide classroom or clinical instruction in a nursing assistant training program.

~~C~~ D. Resources, ratio, Clinical requirements, resources, services, and records

1. A nursing assistant training program shall provide a minimum of one clinical instructor or professional nurse to student ratio of 1 to 10 for every 10 students for students caring if students perform one or more nursing assistant activities for a patient or resident directly for clients. The program shall ensure that the instructor is physically present in the health care setting during each performance of a nursing assistant activity for a patient or resident.

2. ~~A program shall plan and schedule clinical experiences according to the course curriculum.~~

a. ~~The A nursing assistant training program shall include a provide an instructor-supervised clinical experience for each nursing assistant student, which consists of at least 40 hours of direct patient or resident care, and includes at least 20 hours caring for long-term care facility residents for each nursing assistant student. If there is no long-term care facility available within a 50-mile radius of the program, the program may conduct clinical sessions in a healthcare institution that provides experiences with patients or residents who have nursing care needs similar to those of long-term care facility residents.~~

b. ~~3. The A nursing assistant training program shall ensure that each nursing assistant students are student is identified as a student by a name badge or another means readily observable to staff, patients, or residents and treated as students and not utilized utilize students as staff while the students are enrolled in a nursing assistant training program during clinical and traineeship experiences.~~

3-4. A nursing assistant training program shall provide or have access to instructional and educational ~~materials~~ resources adequate to meet the needs of for implementing the program, for the planned number of students, and the instructional staff and shall include, including:

a. Current reference materials, related to the level of the curriculum, and;

b. Instructional tools and equipment Equipment in functional condition for simulating patient care; including:

i. A patient bed, overbed table, and nightstand;

ii. Privacy curtains and call bell;

iii. Thermometers, stethoscopes, including a teaching stethoscope, blood pressure cuffs, and a balance-type scale;

iv. Hygiene supplies, elimination equipment, drainage devices, and linens;

v. Hand washing equipment and clean gloves; and

vi. Wheelchair, gait belt, walker, anti-embolic hose, and cane;

c. Audio-visual equipment and media; and

d. Designated space for didactic teaching and skill practice that provides a clean, distraction-free learning environment for accomplishing the educational goals of the program and is comparable to the space provided by a previously- approved program of similar size and type, if any;

4 5. A nursing assistant training program shall maintain the following program records for three years that contain the following documentation:

a. Curriculum and course schedule for each cohort group;

b. Classroom and supervised clinical hours Results of state-approved written and manual skills testing; and

c. Student participation in Completed student program evaluation forms, a summary of the evaluations for each cohort group, and measures taken by the program, if any, to improve the program based on student and instructor evaluation; and

d. A copy of any Board reports, applications, or correspondence, related to the program.

5 6. A nursing assistant training program shall maintain the following student records for three years that contain the following:

a. ~~Name~~ A record of the student's name, and date of birth, and Social Security number, if available; ;

b. ~~Skills~~ A completed skill checklist; ;

c. Attendance record, which describes any make-up class sessions ; ;

d. Program examination score Scores on each test, quiz, or exam and, if applicable, whether such test quiz or exam was retaken ; ; and

e. For programs with traineeships, Copy of the documentation from the registered nurse supervising the traineeship issued to a training program, indicating that indicates the number of curriculum-hours satisfied by a preceptor-ship, completed and the performance of the student during the traineeship if applicable; and

f. Copy A copy of the documentation certificate of completion issued to a the student upon successful completion of the training program, such as a certificate, transcript, or letter.

~~D~~ E. Periodic evaluation

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1. A nursing assistant training program shall permit the Board, or a state agency designated by the Board, to conduct an onsite, scheduled evaluation for initial Board approval, ~~as required by in accordance with~~ R4-19-803, and renewal of approval, ~~as required by in accordance with~~ R4-19-804.
2. For reasonable cause, ~~as determined by the Board~~, a nursing assistant training program shall permit the Board, or a state agency designated by the Board, to conduct an onsite unannounced evaluation of the program.

F. A nursing assistant training program shall submit written documentation and information regarding the following changes within 30 days of instituting the change:

1. For a change or addition of an instructor or coordinator, the name, license number, and documentation of meeting coordinator or instructor requirements of this Section, as applicable;
2. For a decrease in the number of program hours, a description of the change, the reason for the change, a revised curriculum outline, and a revised course schedule;
3. For a change in classroom location, the address of the new location, if applicable, and a description of the new classroom;
4. For a change in a clinical facility, the name of the new facility and a copy of the clinical contract; and
5. For a change in the name or ownership of the facility, the former, present and new name of the facility.

R4-19-802. Standardized Curriculum

A. The standardized curriculum content for a nursing assistant training program shall include material that will provide a basic level of both knowledge and demonstrable skills for each student completing the program.

B. The standardized A nursing assistant training program curriculum shall require a provide at least minimum number of 120 hours of instruction which can be met by the student completing either one of the following:

1. An integrated A 120 hour curriculum consisting of at least 420 60 hours of classroom instruction and with clinical instruction that satisfies the requirements of R4-19-801(D)(2); or
2. A curriculum of at least 80 60 hours of classroom instruction and 40 hours of supervised clinical instruction that satisfies the requirements R4-19-801(D)(2), followed by a long-term care facility-based preceptorship traineeship. The program coordinator shall ensure that the traineeship experience:
 - a. consisting Consists of as many hours as required to equal 120 hours or more of instruction: no more than 20 hours of the total 120 hours, and If a preceptorship takes place at a long term care facility other than the facility where the nursing assistant training program is located, the long term care facility where the preceptorship takes place shall provide documentation to the training program indicating the number of curriculum hours satisfied by the preceptorship.
 - b. Is verified by the supervising nurse in a written document that contains the number of hours provided through the traineeship and confirmation that the student has demonstrated required skills and abilities, competently performed nursing assistant functions, and met course objectives.

C. A nursing assistant training program shall provide a written curriculum plan to each student that includes overall course goals and for each required subject:

1. Measurable learner-centered objectives,
2. An outline of the material to be taught,
3. The time allotted for each unit of instruction, and
4. The learning activities or reading assignments.

C. The standardized curriculum shall include classroom and clinical instruction in the following A nursing assistant training program shall provide classroom and clinical instruction regarding each of the following subjects:

1. Communication, and interpersonal skills, and documentation;
2. Infection control;
3. Safety and emergency procedures, including the Heimlich© maneuver and cardiopulmonary resuscitation instruction;
4. Client Patient or resident independence;
5. Client Patient and resident rights, such as including: the
 - a. The right to confidentiality,
 - b. the The right to privacy, and
 - c. the The right to be free from abuse, mistreatment, and neglect,
 - d. The right to make personal choices,
 - e. The right to obtain assistance in resolving grievances and disputes,
 - f. The right to care and security of a patient's or resident's personal property, and
 - g. The right to be free from restraints;
6. The need to report Recognizing and reporting abuse, mistreatment and or neglect to appropriate staff a supervisor;
7. Basic nursing assistant skills, including:
 - a. Taking vital signs, height, and weight;
 - b. Maintaining a patient's or resident's environment;
 - c. Observing and reporting pain;
 - d. Assisting with diagnostic tests;

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- e. Providing care for patients or residents with drains and tubes;
 - f. Recognizing and reporting abnormal changes to a supervisor;
 - g. Applying clean bandages;
 - h. Providing peri-operative care; and
 - i. Assisting in admitting, transferring, or discharging patients or residents.
 - 8. Personal care skills, including:
 - a. Bathing, skin care, and dressing;
 - b. Oral and denture care;
 - c. Shampoo and hair care;
 - d. Fingernail care;
 - e. Toileting, perineal, and ostomy care; and
 - f. Feeding and hydration, including proper feeding techniques and use of assistive devices in feeding;
 - 9. Individual client needs including age-specific Age specific, mental health, and social service needs, including:
 - a. Modifying the nursing assistant's behavior in response to patient or resident behavior.
 - b. Demonstrating an awareness of the developmental tasks associated with the aging process.
 - c. Responding to patient or resident behavior.
 - d. Promoting patient or resident dignity.
 - e. Providing culturally sensitive care.
 - f. Caring for the dying patient or resident, and
 - g. Interacting with the patient's or resident's family;
 - 10. Care of the cognitively impaired client patient or resident including:
 - a. Addressing the unique needs and behaviors of patients or residents with dementia.
 - b. Communicating with cognitively impaired patients or residents.
 - c. Understanding the behavior of cognitively impaired patients or residents, and
 - d. Reducing the effects of cognitive impairment;
 - 11. Skills for basic restorative services, including:
 - a. ~~body~~ Body mechanics;
 - b. Resident self-care;
 - c. Assistive devices used in transferring, ambulating, eating, and dressing;
 - d. Range of motion exercises;
 - e. Bowel and bladder training;
 - f. Care and use of prosthetic and orthotic devices; and
 - g. Family and group activities;
 - 12. Nursing Health care team member skills including time management and prioritizing work; and
 - 13. Legal aspects of nursing assistant practice, including:
 - a. Board-prescribed requirements for certification and re-certification;
 - b. Delegation.
 - c. Ethics.
 - d. Advance directives and do-not-resuscitate orders, and
 - e. Standards of conduct under R4-19-814.
 - 14. Body structure and function, together with common diseases and conditions of the elderly.
- D.** A nursing assistant training program shall require that provide a student receive with a minimum of 16 hours instruction in the subjects identified in subsections (C)(1) through (C)(6) prior to before allowing a student to care for clients patients or residents.
- E.** A nursing assistant training program shall utilize a nursing assistant textbook that has been published within the previous five years.

R4-19-803. Initial Approval of Nursing Assistant Training Programs

- A.** An applicant for initial nursing assistant training program approval shall submit an application packet to the Board at least 90 days in advance of before the expected starting date of the program opening date. An applicant shall submit application documents that are unbound, typed or word processed, single-sided, and on white, letter-size paper. The Board does not accept notebooks, spiral bound documents, manuals, books, or tabulations.
- B.** The application packet for initial program approval shall include all of the following:
 - 1. Name, address, and telephone number, and fax number of program;
 - 2. Identity of the program as a long-term care facility-based or other program;
 - 3. Name, license number, telephone number and qualifications of the program coordinator required in R4-19-801;
 - 4. Name, license number, telephone number and qualifications of each program instructors instructor required in R4-19-801;
 - 5. Name and telephone number of the person with administrative oversight of the nursing assistant training program;
 - ~~5-6.~~ Accreditation status of the applicant, if any, including the name of the accrediting body and date of last review;

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- 6 ~~7.~~ Licensure status, if required, including name of licensing agency and the date of last review. Name, address, telephone number, contact person, Department of Health Services (DHS) status, and most recent DHS review for all health care institutions where program classroom or clinical instruction will take place;
 - 7 ~~8.~~ Medicare certification status, if any;
 - 8 ~~9.~~ Evidence of compliance with R4-19-801 and R4-19-802, including the all of the following:
 - a. Program description, consistent with R4-19-801(B) (1) and an implementation plan, including timelines;
 - b. Classroom facilities, equipment, and instructional tools available, consistent with R4-19-801(D)(4); and
 - c. Standardized curriculum. Written curriculum, consistent with R4-19-802,
 - d. A copy of the documentation that the program will use to verify nurse assistant skills for each student, consistent R4-19-801(B)(6)(a)
 - e. A copy of the document issued to the student upon completion of the program, consistent with R4-19-801(B)(5);
 - f. Textbook author, name, year of publication, and publisher; and
 - g. A copy of course policies, consistent with R4-19-801(B)(3) and, if applicable, R4-19-801(B)(4);
 - 9 ~~10.~~ An affidavit For a Medicare or Medicaid certified long-term care facility-based program, a signed, sworn, and notarized document, executed by a program coordinator of a Medicare or Medicaid certified long term care facility, affirming that the program does not require a nursing assistant student to pay a fee for any portion of the program, including the state competency exam.
 11. For a Medicare or Medicaid long-term care facility-based program, the actual price of a textbook and other loaned equipment, if the program charges a student who does not return these items upon course completion, and any commercially available standard uniform, watch, pen, paper, duty shoes, and other commonly available personal items that are required for the course, for which a student may incur an expense.
- C. Following receipt and review of a complete application packet, the Board shall schedule an onsite evaluation of the program, take one of the following actions:
1. Schedule an onsite evaluation of the program and, if requirements are met, approve the program for a period not to exceed two years.
 2. Approve the program for a period that does not exceed one year if requirements are met, without an onsite visit, or
 3. Deny approval of the program if the applicant does not meet the requirements.
- D. A program shall not enroll students prior to conduct classes before receiving program approval.
- E. If approval is in the best interest of the public, the Board shall grant initial approval to any applicant who meets the criteria set forth requirements in A.R.S. Title 32, Chapter 15, and in R4-19-801 and R4-19-802 this Article, and if approval is in the best interest of the public. If the Board denies approval, an applicant may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

R4-19-804. Renewal of Approval of Nursing Assistant Training Programs

- A. A nursing assistant training program applying for renewal of approval shall submit an application packet to the Board prior to before expiration of the current approval. An applicant shall submit application documents that are unbound, typed or word processed, single-sided, and on white, letter-size paper. The Board does not accept notebooks, spiral bound documents, manuals, books, or tabulations.
1. The application packet shall include the following:
 - a. Changes in the program A program description and course goals since previous approval;
 - b. Names Name, license number, and qualifications under R4-19-801 of the current faculty program coordinator and instructors, required in R4-19-801;
 - c. Changes in course curriculum since previous approval A copy of the current curriculum plan, which meets the requirements in R4-19-802;
 - d. Number of classes held, number of students who have completed the program, and the results of the state-approved written and manual skills tests, including first-time pass rate since the last program review within the past two years;
 - e. A copy of course policies, consistent with R4-19-801;
 - e-f. Changes Any change in resources, contracts, and or clinical facilities in use since the previous approval; and
 - f-g. Copy A copy of current student program evaluation forms, a summary of the evaluations for each cohort group, and measures taken by the program, if any, to improve the program based on student and instructor evaluation;
 - h. A sample of the certificate of completion issued to a graduate of the program containing the information required by R4-19-801(B)(5); and
 - i. Textbook author, name, year of publication, and publisher.
 2. Following receipt and review of a complete of the application packet, the a Board representative shall schedule an onsite evaluation of the program review the application packet for completeness under subsection (A)(1). In addition to the other requirements in this Section, an applicant shall provide evidence of at least one of the following to provide a complete application packet:
 - a. That at least one person has completed the program and the state-approved written and manual skills exam

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- within the previous approval period:
- b. If no graduates of the program completed the state-approved written and manual skills exam in the previous approval period, an explanation why Board approval is necessary for public protection, and a comprehensive plan to assist students to apply for testing and certification; or
 - c. If the program did not graduate any students in the previous approval period, a detailed plan including dates, marketing tools, and instructor name, which indicates that the program will be offered within the next six months.
3. Upon receipt and review of a complete application packet the Board, through its authorized representative, shall evaluate the entity offering the program either in-person or by conference call. If a program is to be evaluated by means of a conference call, the Board shall issue a comprehensive request for information to the program for all of the following:
- a. A description of the classroom, supplies, and recordkeeping;
 - b. A copy of the records of three students; and
 - c. A copy of the course schedule for each cohort group.
4. A program that is evaluated by means of a conference call shall ensure that both the coordinator and all instructors are available to participate in the call.
5. A Board representative shall evaluate each program and program site in-person at least once every four years. If a program or program site has received an in-person evaluation for the previous approval, no concerns are identified in the site-visit report, and there have been no complaints filed with the Board for two years following the approval, the program is eligible for a conference call evaluation.
- B. Following ~~an~~ a conference call or onsite evaluation, the Board shall renew program approval for two years if a program meets the criteria set forth in complies with R4-19-801 and R4-19-802 and if renewal is in the best interest of the public. If the program does not comply, the Board shall issue a notice of deficiency under R4-19-805.
- C. If the Board denies renewal of approval, a program may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for renewal of approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.
- D. A program that is denied renewal of approval shall not apply for reinstatement of approval for two years from the date of the denial.

R4-19-805. Deficiencies and Rescission of Program Approval, Voluntary Termination, Disciplinary Action, and Reinstatement

A. Deficiencies and rescission of approval

1. Upon determining that a nursing assistant training program does not comply with ~~R4-19-801 or R4-19-802~~ this Article, the Board shall provide the program coordinator or an administrator who supervises the program with a written notice of deficiency. The Board shall establish a reasonable period of time, based upon the number and severity of deficiencies, to correct for correction of the deficiencies. ~~No~~ Under no circumstances, however, shall the period for correction of deficiencies ~~shall~~ exceed three months after from the date of graduation of the next training class.
 - a. Within 10 days from the date of service of that the notice of deficiency is served, the program coordinator shall file a plan of correction with the Board.
 - b. The program Board shall be subject to may conduct periodic evaluations by the Board during the period of correction to determine whether the program has corrected the deficiencies ~~ascertain~~ progress in correcting the deficiencies.
 - c. The Board shall conduct at least one evaluation immediately following the period of correction to determine whether the program has corrected the deficiencies.
2. The Board shall may rescind the approval of a nursing assistant training program or take other disciplinary action under A.R.S. § 32-1663 based on the number and severity of violations for any of the following reasons:
 - a. Failure to file a plan of correction with the Board within 10 days of service of a notice of deficiency.
 - b. Failure to comply with R4-19-801 or R4-19-802 within the time period set by the Board in the notice of deficiency;
 - c. Noncompliance with federal, state, or if applicable, private postsecondary requirements;
 - d. Failure to permit a scheduled or unannounced onsite evaluation, authorized by subsection R4-19-801(D E); or
 - e. Loaning or transferring program approval to another entity or facility, including a facility with the same ownership;
 - f. Conducting a nursing assistant training program before approval is granted;
 - g. Conducting a nursing assistant training program after expiration of approval without filing an application for renewal of approval before the expiration date; or
 - h. If the program is conducted by a long-term care facility, charging for any portion of the program.
 - e. Failure to conduct at least one program during a two-year period.
3. A If the Board rescinds approval of a nursing assistant training program, that has its approval rescinded the program may request a hearing by filing a written request with the Board within 30 days of service of the Board's order

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rescinding approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6 Article 10, and 4 A.A.C. 19, Article 6.

4. If the Board rescinds approval of a nursing assistant training program, the program shall not seek reinstatement for two years from the date of the rescission.

B. Voluntary termination

1. ~~The~~ If a nursing assistant training program is being voluntarily terminated, the program coordinator or an administrator who supervises the program shall submit written notification notice of termination to the Board when a decision is made to voluntarily terminate a nursing assistant training program.
2. The program coordinator shall maintain the nursing assistant training program, including the instructors, until the last student is transferred or has completed the nursing assistant training program.

C. Reinstatement

1. ~~Any~~ If the Board rescinds approval of a nursing assistant training program, that has its approval rescinded the program may apply for reinstatement of the program after a period of 2 years by meeting complying with the requirements of R4-19-803 this Article.
2. The applicant shall submit An a complete application packet shall be submitted in writing and shall that contain contains all of the information and documentation required to be submitted in subsection by R4-19-803(B). The application packet The applicant shall contain or have attached provide substantial evidence that the basis for rescission has been removed no longer exists and that reinstatement of the program is in the best interest of the public.
3. Unless the basis for rescission still exists, the ~~The~~ Board shall reinstate a nursing assistant training program that otherwise meets the requirements of R4-19-803 this Article. A program that is denied reinstatement may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying reinstatement. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

R4-19-806. Nursing Assistant Certification by Examination

A. An applicant for certification by examination shall submit the following information and documentation to the Board:

1. An application ~~packet~~ that contains all of the following information or documentation:
 - a. Full legal name;
 - b. Current address, including county of residence, and telephone number;
 - c. Date of birth;
 - d. Social ~~security~~ Security number;
 - e. Educational background, including the ~~names of educational institutions~~ name of the training program attended, ~~dates and date of graduation, and degree received, if applicable;~~
 - f. Current employer, including address and telephone number, type of position, and dates of employment;
 - g. A ~~listing~~ list of all states in which the applicant is or has been registered as a nursing assistant and the certificate number, if any;
 - h. Responses to questions addressing that address each of the following subjects:
 - ~~i. Prior disciplinary action on a license or certificate authorizing practice in any occupation,~~
 - ~~ii. Pending investigation or disciplinary action on a nursing license or nursing assistant certificate, Any pending disciplinary action by a nursing regulatory agency or nursing assistant regulatory agency in the United States or its territories or current investigation regarding the applicant's nursing license, nursing assistant license, or nursing assistant certificate in another state or territory of the United States,~~
 - ~~iii. Pending criminal charges,~~
 - ~~iv. Prior misdemeanor or undesignated offense conviction,~~
 - ~~v. ii Prior felony conviction and date of absolute discharge of sentence~~ Felony conviction or conviction of an undesignated or other similar offense and the date of absolute discharge of sentence, and
 - ~~iii. Unprofessional conduct as defined in A.R.S. § 32-1601;~~
 - ~~vi. Use of chemical substances in a way that may limit the ability to practice in a health care profession, and~~
 - ~~vii. Prior civil judgment resulting from malpractice or negligence in connection with practice in a health care profession.~~
 - ~~viii. A sworn~~ A written or electronic signature by the applicant on a statement under oath by the applicant verifying attesting to the truthfulness of the information provided by the applicant.
2. Proof of satisfactory completion of a nursing assistant training program that meets the requirements ~~of in~~ in subsection (B); ~~such as a certificate, transcript, or letter;~~
3. One or more fingerprint cards, if required by A.R.S. § 32-1606; and
4. Applicable fees.

B. An applicant for certification as a nursing assistant shall submit a passing score on a Board-approved nursing assistant examination and meet provide both one of the following criteria:

1. Satisfactory completion of an approved training program in Arizona, or a program in another state or territory of the United States that meets the requirements of subsection R4-19-802(B) Proof that the applicant has completed a Board-approved nursing assistant training program;

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2. Proof that the applicant has completed a nursing assistant training program approved in another state or territory of the United States consisting of at least 120 hours;
 3. Proof that the applicant has completed a nursing assistant program approved in another state or territory of the United States of at least 75 hours of instruction and proof of working as a nursing assistant for an additional number of hours that together with the hours of instruction, equal at least 120 hours; or
 - ~~2. Passing score on the written and manual skills examinations or a passing score on the written examination and proof of a valid nursing license or proof of graduation from an approved nursing program.~~
 4. Proof that the applicant either holds of a valid nursing license in the U.S. or territories, has graduated from an approved nursing program, or otherwise meets educational requirements for a registered or practical nursing license in Arizona.
- C. An applicant who fails either the written or manual skills portion of the nursing assistant examination may retake the failed portion of the examination two additional times until a passing score is achieved. An applicant shall pass both portions of the nursing assistant examination within two years from the date of completion of the nursing assistant training program or meet the requirements in subsection D.
- D. An applicant ~~who fails either the written or manual skills examination three times or~~ who does not pass an examination within the time period specified in subsection (C) shall repeat and ~~satisfactorily~~ complete a training program before being permitted to retake an examination.
- E. An applicant who has never taken the examination and provides proof of at least 160 hours of employment as a nursing assistant for every two year period since completing a state-approved nursing assistant training program meets federal requirements to take the written and manual skills nursing assistant examination.
- ~~E.F.~~ The Board shall certify an applicant who meets the applicable criteria in this Article if certification is in the best interest of the public.
- ~~F.G.~~ An applicant who is denied nursing assistant certification may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for certification. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article ~~6~~ 10 and 4 A.A.C. 19, Article 6.

R4-19-807. Nursing Assistant Certification by Endorsement

- A. An applicant for nursing assistant certification by endorsement shall submit all of the information, documentation, and fees required in R4-19-806.
- B. An applicant whose current employment is less than one year shall list all employers during the past two years.
- ~~B.C.~~ An applicant for nursing assistant certification by endorsement shall meet the training program criteria in ~~subsection R4-19-806 (B) (1) and:~~
- D. In addition to the other requirements of this Section, an applicant for certification by endorsement shall provide evidence that the applicant:
1. ~~Be~~ Is listed as active on a nursing assistant register or a substantially equivalent register by another state or territory of the United States; and
 2. ~~Meet~~ Meets one or more of the following criteria:
 - a. Currently is working in nursing, performing ~~nursing-related~~ nursing assistant activities, ~~or working in whether the job description or job title includes the term of a certified nursing assistant;~~
 - b. Has worked in nursing, ~~performed performing nursing-related~~ nursing assistant activities, ~~whether or worked in the job description or job title included the term "certified nursing assistant" of a nursing assistant for at least 160 hours within the past two years; or~~
 - c. Has completed a nursing assistant training program and passed the required examination within the past two years.
- ~~C.E.~~ The Board shall certify an applicant who meets the applicable criteria in this Article if certification is in the best interest of the public.
- ~~D.F.~~ An applicant who is denied nursing assistant certification may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for certification. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article ~~6~~ 10 and 4 A.A.C. 19, Article 6.

R4-19-808. Temporary Certificate

- A. Subject to subsection (B), the Board ~~shall~~ may issue a temporary nursing assistant certificate to an applicant who desires to work as a certified nursing assistant ~~if based on receipt or consideration of the following :~~
1. ~~The Board receives a~~ A report from the Arizona Department of Public Safety, ~~which verifies~~ verifying that it the Department has no criminal history record information, as that term is defined in A.R.S. § 41-1701, relating to regarding the applicant; and
 2. ~~The applicant:~~ An application for temporary nursing assistant certificate, furnished by the Board and completed by the applicant;
 - ~~3.a. Submits to the Board an application for a temporary nursing assistant certificate with the~~ The fee required under A.R.S. § 32-1643(A)(9); and

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4. Evidence that the applicant is qualified for:

- ~~b.a. Is qualified for certification~~ Certification by endorsement under A.R.S. § 32-1648 and R4-19-807, ~~and submits through submission of documentation or an official statement from another state or territory of the United States, verifying that the applicant has a current certificate or an equivalent document from that state or territory; or~~
- ~~e.b. Is qualified for certification~~ Certification by examination under A.R.S. § 32-1645 and R4-19-806.

- B. An applicant who discloses a disciplinary charge, ~~or substantiated complaint, criminal conviction, chemical dependency substance abuse, pending disciplinary charge, or a substantiated complaint by a regulatory agency, or malpractice claim~~ is not eligible for a temporary certificate without prior Board approval.
- C. Unless extended for good cause under subsection (D), a temporary certificate is valid for ~~six~~ three months.
- D. A temporary certificate holder may apply and the Board or the Executive Director ~~shall~~ may grant an extension for good cause. Good cause means reasons beyond the control of the temporary certificate holder, such as unanticipated delays in obtaining information required for nursing assistant certification.

R4-19-809. Certified Nursing Assistant Certificate Renewal

- A. A certified nursing assistant ~~applying may apply~~ for renewal of ~~certification a certificate shall submit by submitting~~ an application ~~packet~~ to the Board on or before the expiration date of ~~certification the certificate~~.

1. The application packet shall include all of the following:

- a. Full legal name;
- b. Current address, including county of residence, and telephone number;
- c. Date of birth;
- d. Current employer;
- e. ~~Whether the applicant, if If the applicant has not been not-employed in nursing as a nursing assistant, performing nursing related or performed nursing assistant activities, whether or working in the job description or the job title included the term of a certified nursing assistant, as specified in subsection (A)(2), documentation that the applicant has completed a Board-approved nursing assistant training program and passed both the written and manual skills portions of the competency examinations examination within the past two years;~~
- f. Responses to questions ~~addressing that address~~ the following subjects:
 - ~~i. Disciplinary action on a license or certificate authorizing practice in any occupation since certified or last renewed;~~
 - ~~ii. Pending investigation or disciplinary action on a nursing license or nursing assistant certificate since certified or last renewed, Pending disciplinary action by a nursing regulatory agency or nursing assistant regulatory agency in the United States or its territories or current investigation of the applicant's nursing license, nursing assistant license, or nursing assistant certificate in another state or territory of the United States;~~
 - ~~iii. Pending criminal charges since certified or last renewed;~~
 - ~~iv. Misdemeanor or undesignated offense conviction since certified or last renewed;~~
 - ~~v.ii. Felony conviction or conviction of undesignated offense and date of absolute discharge of sentence since certified or last renewed, and~~
 - ~~iii. Unprofessional conduct as defined in A.R.S. § 32-1601;~~
 - ~~vi. Use of chemical substances in a way that may limit the ability to practice in a health care profession since certified or last renewed, and~~
 - ~~vii. Civil judgment resulting from malpractice or negligence in connection with practice in a health care profession since certified or last renewed.~~

- g. ~~A written or electronic signature by the applicant on a sworn statement under oath by the applicant verifying attesting to the truthfulness of the information provided by the applicant.~~

- 2. Documentation of proof of employment, such as a pay stub, W-2 form, or letter from an employer that ~~validates~~ verifies the applicant's employment as a nursing assistant or the applicant's performance of nursing ~~related~~ assistant activities for a minimum of 160 hours within the past two years, and

3. Applicable fees.

- B. The certificate of a nursing assistant who fails to renew ~~shall expire~~ expires on the last day of the month of a certificate holder's birthdate.

- 1. A nursing assistant's responsibility to renew is not relieved by the nursing assistant's failure to obtain an application.
- 2. A nursing assistant who fails to renew shall not work as a certified nursing assistant.
- 3. ~~The~~ Based on consideration of a nursing assistant's record regarding timely renewal, the Board ~~shall~~ may impose a late fee on ~~any~~ a nursing assistant who fails to renew certification in a timely manner.

R4-19-810. Certified Nursing Assistant Register

- A. The Executive Director Register shall include the following information in the Register for each individual ~~who has successfully completed a Board-approved nursing assistant training program who receives Board certification~~:

- 1. Full legal name and any other names used;
- 2. ~~Home address~~ Address of record;

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3. County of residence;
4. ~~Date of birth;~~
5. ~~Social security number;~~
- 6-4. The date of initial placement on the register;
- 7-5. Dates and results of ~~written and manual skills examinations~~ both the written and manual skills portions of the nursing assistant competency examination;
- 8-6. Date of expiration of current certificate, if applicable;
- 9-7. Existence of pending investigation, if applicable; and
- 10 8. Status of certificate, such as active, denied, expired, or revoked, ~~if~~ as applicable.

- B. The ~~Register Executive Director~~ shall include the following information in the Register for ~~each an individual who has been disciplined by~~ if the Board, or sanctioned by the United States Department of Health and Human Services (HHS), or the Arizona Department of Health Services finds that the individual has violated relevant law:
1. ~~Disciplinary~~ For a finding ~~action by the Board or HHS, the Executive Director shall include:~~
 - a. ~~Type of action~~ The finding, including the date of the decision, and a reference to each statute, rule, or regulation violated, ; and
 - b. ~~Date of action~~ The sanction, if any, including the date of action and the duration of action, if time-limited.
 2. ~~Sanctions by the United States Department of Health and Human Services:~~
 - a. ~~Date excluded;~~
 - b. ~~Nature of exclusion, and~~
 - c. ~~Length of exclusion.~~
 - 3-2. ~~Complaints substantiated~~ For a finding by the Arizona Department of Health Services under the Omnibus Reconciliation Act, 42 CFR § 483.150 et seq., the Executive Director shall include:
 - a. ~~The allegation;~~
 - b. ~~Documentation of the investigation, including:~~
 - i. ~~Nature of allegation, and~~
 - ii. ~~Evidence supporting allegation~~ the finding;
 - c. ~~Date of hearing, if any, or the date that the complaint was substantiated; and~~
 - d. ~~Statement disputing the allegation, if any;~~
 - e. The finding, including the date of the decision and a reference to each statute or rule violated; and
 - f. The sanction, including the dates of action and the duration of the sanction, if time-limited.

R4-19-812. Change of Name or Address

- A. ~~A An applicant or a~~ A certified nursing assistant, who has legally changed the nursing assistant's changes name names, shall notify the Board in writing within 30 days of ~~the any~~ name change. The applicant or certified nursing assistant shall submit a copy of ~~the any~~ official document evidencing the name change.
- B. ~~A An applicant or a~~ A certified nursing assistant shall notify the Board in writing within 30 days of any address change.

R4-19-813. Performance of Nursing Assistant Tasks

- A. A certified nursing assistant may perform the following:
1. Tasks for which the nursing assistant has been trained through ~~a basic~~ the curriculum as identified in R4-19-802, and
 2. Tasks learned through inservice or educational training if the task meets the following criteria and the nursing assistant has demonstrated competence performing the task:
 - a. The task can be safely performed according to clear, exact, and unchanging directions;
 - b. The task poses minimal risk ~~for to~~ to the client patient or resident and the consequences of performing the task improperly are not life-threatening or irreversible;
 - c. The results of the task are reasonably predictable; and
 - d. Assessment, interpretation, or decision-making is not required during the performance or at the completion of the task.
- B. A nursing assistant may not perform any task ~~requiring~~ that requires a judgment based on nursing knowledge, such as the administration of medications.
- C. A nursing assistant ~~who accepts a client assignment is responsible for the following shall:~~
1. ~~Recognizing~~ Recognize the limits of the nursing assistant's personal knowledge, skills, and abilities;
 2. ~~Recognizing the legal aspects of~~ Comply with laws relevant to nursing assistant practice;
 3. ~~Informing~~ Inform the ~~nurse~~ registered nurse, licensed practical nurse, or another person authorized to delegate the task about the nursing assistant's ability to perform the ~~assigned task prior to~~ before accepting the assignment;
 4. ~~Accepting~~ Accept delegation, instruction, and supervision from ~~the a~~ a professional or practical nurse or ~~the another~~ another person authorized to delegate ~~the a~~ a task;
 5. ~~Acknowledging accountability~~ Acknowledge responsibility for personal actions ~~in completing~~ necessary to complete

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~~the assignment an~~ accepted ~~assigned~~ task;

6. ~~Following~~ Follow the ~~client's~~ plan of care, if available;
7. ~~Observing, reporting, Observe, report, and recording~~ record signs, symptoms, and changes in the ~~client's~~ patient or resident's condition in an ongoing and timely manner; and
8. ~~Retaining~~ Retain responsibility for the assigned task without delegating it to another person.

R4-19-814. Standards of Conduct for Certified Nursing Assistants

A. For the purpose of this Section:

1. "Failure to maintain professional boundaries" means any conduct or behavior by a nursing assistant, regardless of the nursing assistant's intention, that is likely to lessen the benefit of care to a patient, resident, or their family, and places the patient, resident, or their family, at risk of being exploited financially, emotionally, or sexually; and
2. "Dual relationship" means a nursing assistant simultaneously engages in a professional and a nonprofessional relationship with a patient, resident, or their family that is avoidable, non-incidental, and places the patient or resident at risk for financial, emotional, or sexual exploitation.

B. For purposes of A.R.S. § 32-1601 (16), a practice or conduct that is or might be harmful or dangerous to the health of a patient or the public and constitutes a basis for disciplinary action on a certificate includes the following:

1. Failing to maintain professional boundaries or engaging in a dual relationship with a patient, resident, or any member of the patient's or resident's family.
2. Engaging in sexual conduct with a patient, resident, or any member of the patient's or resident's family who does not have a pre-existing relationship with the nursing assistant, or any conduct in the work place that a reasonable person would interpret as sexual;
3. ~~Leaving an assignment or abandoning a client~~ patient or resident requiring who requires immediate care without properly notifying ~~appropriate supervisory personnel~~ the immediate supervisor;
4. ~~Failing to accurately document care and treatment provided to clients~~ a patient or resident;
5. Falsifying or making a materially incorrect entry in a health care record;
6. ~~Failing to follow an employer's policies and procedures, designed to safeguard the client~~ patient or resident;
7. ~~Failing to take action to protect a client~~ patient or resident whose safety or welfare is at risk from potential or actual incompetent health care practice, or to report the practice to the ~~appropriate authorities~~ immediate supervisor or a facility administrator;
8. ~~Failing to report signs, symptoms, and changes in client~~ patient or resident conditions to the ~~appropriate individual~~ immediate supervisor in an ongoing and timely manner;
9. ~~Failing to respect~~ Violating client ~~the rights and or dignity of a patient or resident;~~
10. ~~Violating a client's~~ patient or resident's right of privacy; by disclosing confidential information; or knowledge concerning a client ~~the patient or resident, unless disclosure is otherwise required by law to disclose the information;~~
11. ~~Neglecting or abusing a client~~ patient or resident physically, verbally, emotionally, or financially;
12. ~~Engaging in sexual misconduct or boundary violations with a client;~~
13. ~~Soliciting, or borrowing, or removing property or money from a client~~ patient or resident, or a client's any member of the patient's or resident's family, a client's residence, or employer;
14. ~~Removing, without authorization, any money, property, or personal possessions, or requesting payment for services not performed from a patient, resident, employer, co-worker, or member of the public.~~
15. ~~Using~~ Repeated use or being under the influence of alcoholic beverages ~~alcohol, medication, intoxicants, over-the-counter drugs, prescription drugs, or controlled drugs~~ or any other substance to the extent that judgment may be impaired and practice detrimentally affected or while on duty in any work setting;
16. ~~Assuming client~~ Accepting patient or resident care tasks ~~for which that~~ the nursing assistant lacks the education or competence to perform;
17. ~~Removing, without authorization, narcotics, drugs, supplies, equipment, or medical records from any work setting;~~
18. ~~Obtaining, possessing, using, or selling any narcotic, controlled substance, or illegal drug in violation of any employer policy or any federal or state criminal law; or in violation of the policy of any employer;~~
19. ~~Permitting or assisting another person to use the nursing assistant's certificate~~ or identity for any purpose;
20. ~~Making untruthful or misleading statements to advertise in advertisements of the individual's practice as a certified nursing assistant;~~
21. Offering or providing certified nursing assistant services for compensation without a designated registered nurse supervisor;
22. Threatening, harassing, or exploiting an individual;
23. Using violent or abusive behavior in any work setting;
24. Failing to cooperate with the Board during an investigation by:
 - a. Not furnishing in writing a complete explanation of a matter reported under A.R.S. § 32-1664;
 - b. Not responding to a subpoena issued by the Board;
 - c. Not completing and returning a Board-issued questionnaire within 30 days; or
 - d. Not informing the Board of a change of address or phone number within 10 days of each change;

Notices of Final Rulemaking

24. Engaging in fraud or deceit regarding the certification exam or an initial or renewal application for certification;
25. Making a written false or inaccurate statement to the Board or the Board's designee during the course of an investigation;
26. Making a false or misleading statement on a nursing assistant or health care related employment or credential application concerning previous employment, employment experience, education, or credentials;
27. If an applicant or certified nursing assistant is charged with a felony or a misdemeanor, involving conduct that may affect patient safety, failing to notify the Board, in writing, within 10 days of being charged under A.R.S. § 32-3208. The applicant or certified nursing assistant shall include the following in the notification:
a. Name, current address, telephone number, Social Security number, and license number, if applicable;
b. Date of the charge; and
c. Nature of the offense;
28. Failing to notify the Board, in writing, of a conviction for a felony or an undesignated offense within 10 days of the conviction. The nursing assistant or applicant shall include the following in the notification:
a. Name, current address, telephone number, social security number, and license number, if applicable;
b. Date of the conviction;
c. Nature of the offense; and
20- ~~Failing to cooperate with the Board by not responding to a Board subpoena; and~~
21-29. Practicing in any other manner that gives the Board reasonable cause to believe that the health of a client, patient, resident, or the public may be harmed.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

[R05-392]

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| R4-23-408 | Amend |
| R4-23-605 | Amend |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statutes: A.R.S. §§ 32-1904(A)(1) and (4) and 32-1904(B)(3)
Implementing statutes: A.R.S. §§ 32-1929, 32-1930, and 32-1963
- 3. The effective date of the rules:**
December 6, 2005
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 11 A.A.R. 487, January 21, 2005
Notice of Proposed Rulemaking: 11 A.A.R. 2190, June 10, 2005
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Dean Wright, Compliance Officer
Address: Board of Pharmacy
4425 W. Olive Ave., Suite 140
Glendale, AZ 85302
Telephone: (623) 463-2727, ext. 131
Fax: (623) 934-0583
E-mail: rxcop@cox.net
- 6. An explanation of the rule, including the agency's reason for initiating the rule:**
Based on comments from licensees and permittees regarding issues of compliance, the Board staff identified possible changes to R4-23-408 (Computer Records) and R4-23-605 (Resident Drug Wholesaler Permit).
R4-23-408(D), (E), and (G) details the requirements necessary if a pharmacy's computer system does not meet the requirements established in R4-23-408(A) and (B). The rules will amend R4-23-408(D), (E), and (G) to also require

Notices of Final Rulemaking

compliance with R4-23-408(F). R4-23-408(F) addresses the issue of security and confidentiality of a patient's records within a pharmacy's computer system. R4-23-408 (A) and (B) address a pharmacy's computer systems and data storage and retrieval.

Although R4-23-605 does not specifically state it, the Board believes that a drug wholesaler shall not package, repackage, label, or relabel any drug or device. Since the Board rule for nonprescription drug retailers already states specifically that a nonprescription drug retailer shall not package, repackage, label, or relabel a drug or device, the Board intends to amend R4-23-605 to specifically state that a full-service or nonprescription drug wholesaler shall not package, repackage, label, or relabel a drug or device. It is the Board's contention that packaging, repackaging, labeling, and relabeling may only be done by a manufacturer or repackager properly permitted by the Board, by a pharmacist in performance of a pharmacist's duties in a properly permitted pharmacy, or by other persons specifically exempted by A.R.S. § 32-1921. The rules will amend R4-23-605(D)(2) and (3) with language that requires that a wholesaler shall sell a drug only in the original container packaged and labeled by the manufacturer or repackager and not package, repackage, label, or relabel any drug. The rules will include format, style, and grammar necessary to comply with the current rules of the Secretary of State and Governor's Regulatory Review Council.

The Board believes that approval of these rules benefits the public and the pharmacy community by clearly establishing the standards for computer records and resident drug wholesaler permits.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

The amended rules will impact the Board, pharmacists, pharmacies, resident drug wholesalers, and the public. The amended rules' impact on the Board will be the usual rulemaking-related costs which are minimal. The amended rules will have no economic impact on pharmacies or pharmacists. The amended rules will clarify the requirements for a pharmacy's computer system and data storage and retrieval and address the issue of security and confidentiality of a patient's records within a pharmacy's computer system. The amended rules will have no economic impact on resident drug wholesaler permittees. The amended rules will specifically state that a resident drug wholesaler permittee, like a nonprescription drug retailer permittee, shall not package, repackage, label, or relabel a drug or device. The Board has always told resident wholesaler permittees that they could not package, repackage, label, or relabel any drug, but the resident drug wholesaler permit rule did not specifically state the prohibition. The Board relied on the statute that states that only a manufacturer or repackager may package, repackage, label, or relabel a drug or device. The amended rules have no economic impact on the public.

The public, Board, pharmacists, pharmacies, and resident drug wholesalers benefit from rules that are clear, concise, and, understandable. The amended rules benefit the public, the Board, and the pharmacy community by clearly establishing the standards for computer records and resident drug wholesaler permits.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

There are no substantive changes in the final rules from the proposed rules. There are minor changes to style, format, grammar, and punctuation requested by G.R.R.C. staff. The Arizona Community Pharmacy Committee's verbal and written comments pointed to the statement in the Board's Notice of Rulemaking Docket Opening and the Notice of Proposed Rulemaking under the item stating the Board's reasons for initiating the rulemaking. In that statement, the Board states: "it is the Board's contention that packaging, repackaging, labeling, and relabeling may only be done by a manufacturer or repackager properly permitted by the Board, by a pharmacist in performance of a pharmacist's duties in a properly permitted pharmacy, or by other persons specifically exempted by A.R.S. § 32-1921." The Arizona Community Pharmacy Committee stated that because of that statement they feel that the words "or repackager" should be inserted in the rule after the word "manufacturer" in subsections R4-23-605(D)(2)(a)(i), (D)(2)(b)(i), (D)(3)(a)(i), and (D)(3)(b)(i). The Board agreed with the Arizona Community Pharmacy Committee and stated that leaving out the reference to "repackager" in the rule was an oversight. The final rule includes the addition of "or repackager" after the word "manufacturer" in subsections R4-23-605(D)(2)(a)(i), (D)(2)(b)(i), (D)(3)(a)(i), and (D)(3)(b)(i).

11. A summary of the comments made regarding the rule and the agency response to them:

A public hearing was held on July 11, 2005. Janet Elliott representing The Arizona Community Pharmacy Committee attended the hearing to speak for the proposed rulemaking and provided a written statement from the committee expressing the committee's support of the proposed rulemaking. Ms. Elliott's verbal and written comments brought the matter of "repackager" to the Board's attention. Ms. Elliott pointed out that the Board's statement in Notice of Rulemaking Docket Opening and the Notice of Proposed Rulemaking under the item stating the Board's reasons for

Notices of Final Rulemaking

initiating the rulemaking states that: "it is the Board's contention that packaging, repackaging, labeling, and relabeling may only be done by a manufacturer or repackager properly permitted by the Board, by a pharmacist in performance of a pharmacist's duties in a properly permitted pharmacy, or by other persons specifically exempted by A.R.S. § 32-1921." Ms. Elliott stated that her members were concerned that the rule language did not include "repackagers" as was stated in the Notices as one of the reasons for initiating the rulemaking. Ms. Elliott stated that the Arizona Community Pharmacy Committee could support the rule if the words "or repackager" were inserted after the word "manufacturer" in subsections R4-23-605(D)(2)(a)(i), (D)(2)(b)(i), (D)(3)(a)(i), and (D)(3)(b)(i). The Board assured Ms. Elliott that leaving out the word "repackager" was an oversight. The Board thanked Ms. Elliott and the committee for their comments and explained that the Board agreed with their recommended changes. The Board assured Ms. Elliott that the words "or repackager" would be included to the final rules as recommended in the committee's comments.

The Board received a written comment from the National Association of Chain Drugs Stores (NACDS) expressing concern that the proposed rule changes would have the unintended effect of preventing chain pharmacy distribution centers from engaging in the legitimate repackaging and relabeling of prescription drugs received in bulk amounts into smaller quantities for distribution to their own pharmacies for use in dispensing prescription drugs. NACDS's concern was based on their understanding that the Board permits chain pharmacy distribution centers as drug wholesalers. NACDS states that pharmacies engage in repackaging and relabeling in order to facilitate the efficient dispensing of prescriptions, and chain pharmacies often have their distribution centers handle this task. NACDS offered an amendment to the rule that would allow chain pharmacy distribution centers to repackage or relabel prescription drugs for distribution to their pharmacies. The Board's response to the NACDS states that the Board is not aware of any Arizona chain pharmacy distribution centers who are repackaging drug and that the Board has made no statement that would allow a chain pharmacy distribution center to repackage drugs for distribution to their pharmacies without a manufacturer or repackager permit. The Board further commented that the Board does allow a pharmacist in a pharmacy to repackage or prepackage drugs for dispensing in that pharmacy or if a chain pharmacy, another pharmacy in that chain. The Board does not allow a pharmacist to repackage or prepackage drugs for distribution to another pharmacy of different ownership. The Board thanked the NACDS for its comments and explained that the changes recommended by the Arizona Community Pharmacy Committee would be implemented in the final rule.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously made as an emergency rule?

No.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

ARTICLE 4. PROFESSIONAL PRACTICES

Section

R4-23-408. Computer Records

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

Section

R4-23-605. Resident Drug Wholesaler Permit

ARTICLE 4. PROFESSIONAL PRACTICES

R4-23-408. Computer Records

- A.** No change
1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 2. No change
 3. No change
 4. No change
 5. No change
- B.** No change
1. No change
 2. No change
 3. No change
 4. No change
 5. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 6. No change
- C.** No change
1. No change
 2. No change
 3. No change
 4. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - b. No change
 - i. No change
 - ii. No change
 - iii. No change
- D.** If a pharmacy computer system does not comply with the requirements of subsections (A), ~~and~~ (B), and (F) the pharmacy permittee or pharmacist-in-charge shall bring the computer system into compliance within three months of a notice of noncompliance or violation letter. If the computer system is still noncompliant with subsection (A), ~~or~~ (B), or (F) after three months, the pharmacy permittee or pharmacist-in-charge shall immediately comply with the manual recordkeeping requirements of R4-23-402 and R4-23-407.
- E.** If a pharmacy's personnel perform manual recordkeeping under subsection (D), the pharmacy's personnel shall continue manual recordkeeping until the pharmacist-in-charge sends proof, verified by a Board compliance officer, that the computer system complies with subsections (A), ~~and~~ (B), and (F).
- F.** No change
1. No change
 2. No change
- G.** A computer system that does not comply with all the requirements of subsections (A), ~~and~~ (B), and (F) may be used in a pharmacy if:
1. The computer system was in use in the pharmacy before July 11, 2001, and
 2. The pharmacy complies with the manual recordkeeping requirements of R4-23-402 and R4-23-407.

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

R4-23-605. Resident Drug Wholesaler Permit

- A. No change
- B. No change
 - 1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
 - h. No change
 - i. No change
 - j. No change
 - k. No change
 - l. No change
 - m. No change
 - 2. No change
 - a. No change
 - b. No change
 - c. No change
- C. No change
- D. No change
 - 1. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - b. No change
 - i. No change
 - ii. No change
 - iii. No change
 - 2. Drug sales.
 - a. A full-service drug wholesale permittee shall:
 - ~~i.~~ Not sell, distribute, give away, or dispose of, any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical, except in the original container packaged and labeled by the manufacturer or repackager;
 - ~~ii.~~ Not package, repackage, label, or relabel any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical;
 - ~~iii.~~ Not sell, distribute, give away, or dispose of, any narcotic or other controlled substance, or prescription-only drug or device, to anyone except a pharmacy, drug manufacturer, or full-service drug wholesaler currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;
 - ~~iv.~~ Not sell, distribute, give away, or dispose of, any nonprescription drug, precursor chemical, or regulated chemical, to anyone except a pharmacy, drug manufacturer, full-service or nonprescription drug wholesaler, or nonprescription drug retailer currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;
 - ~~v.~~ Maintain a copy of the current permit or license of each person or firm who buys, receives, or disposes of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical; and
 - ~~vi.~~ Provide permit and license records upon request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(4).
 - b. A nonprescription drug wholesale permittee shall:
 - ~~i.~~ Not sell, distribute, give away, or dispose of, any nonprescription drug, precursor chemical, or regulated chemical, except in the original container packaged and labeled by the manufacturer or repackager;
 - ~~ii.~~ Not package, repackage, label, or relabel any nonprescription drug, precursor chemical, or regulated chemical;
 - ~~iii.~~ Not sell or distribute, any nonprescription drug, precursor chemical, or regulated chemical, to anyone except a pharmacy, drug manufacturer, full-service or nonprescription drug wholesaler, or nonprescription drug

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retailer currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;
~~ii-iv.~~ Maintain a record of the current permit or license of each person or firm who buys, receives, or disposes of any nonprescription drug, precursor chemical, or regulated chemical; and
~~iii-v.~~ Provide permit and license records upon request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(4).

c. Nothing in this subsection shall be construed to prevent the return of a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical to the original source of supply.

3. Out-of-state drug sales.

a. A full-service drug wholesale permittee shall:

i. Not sell, distribute, give away, or dispose of, any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical, except in the original container packaged and labeled by the manufacturer or repackager;

ii. Not package, repackage, label, or relabel any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical;

~~iii.~~ Not sell, distribute, give away, or dispose of, any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical, to anyone except a properly permitted, registered, licensed, or certified person or firm of other jurisdictions;

~~ii-iv.~~ Maintain a copy of the current permit, registration, license, or certificate of each person or firm who buys, receives, or disposes of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical; and

~~iii-v.~~ Provide permit, registration, license, and certificate records upon request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(4); and

b. A nonprescription drug wholesale permittee shall:

i. Not sell, distribute, give away, or dispose of, any nonprescription drug, precursor chemical, or regulated chemical, except in the original container packaged and labeled by the manufacturer or repackager;

ii. Not package, repackage, label, or relabel any nonprescription drug, precursor chemical, or regulated chemical;

~~iii.~~ Not sell or distribute, any nonprescription drug, precursor chemical, or regulated chemical, to anyone except a properly permitted, registered, licensed, or certified person or firm of another jurisdiction;

~~ii-iv.~~ Maintain a record of the current permit, registration, license, or certificate of each person or firm who buys, receives, or disposes of any nonprescription drug, precursor chemical, or regulated chemical; and

~~iii-v.~~ Provide permit, registration, license, or certificate records upon request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(4).

4. No change

a. No change

i. No change

ii. No change

b. No change

i. No change

ii. No change

E. No change

1. No change

2. No change

a. No change

b. No change

3. No change

4. No change

5. No change

6. No change

7. No change

8. No change

9. No change

F. No change

1. No change

a. No change

b. No change

c. No change

i. No change

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- ii. No change
 - iii. No change
 - d. No change
 - e. No change
 - i. No change
 - ii. No change
 - iii. No change
- 2. No change
 - a. No change
 - b. No change
 - c. No change
 - i. No change
 - ii. No change
 - iii. No change
 - d. No change
 - e. No change
 - i. No change
 - ii. No change
 - iii. No change

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ADMINISTRATION

[R05-396]

PREAMBLE

1. Sections Affected

R9-22-105
R9-22-501
R9-22-501
R9-22-502
R9-22-502
R9-22-503
R9-22-504
R9-22-505
R9-22-507
R9-22-508
R9-22-509
R9-22-510
R9-22-511
R9-22-512
R9-22-513
R9-22-514
R9-22-518
R9-22-521
R9-22-522
R9-22-524

Rulemaking Action

Repeal
Repeal
New Section
Repeal
New Section
New Section
Amend
Repeal
Repeal
Repeal
Amend
Repeal
Repeal
Amend
Repeal
Repeal
Amend
Amend
Amend
Repeal

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 36-2903; 36-2903.01

Implementing statute: A.R.S. §§ 36-2903; 36-2903.02; 36-2907; 36-2910

3. The effective date of the rules:

December 5, 2005

Notices of Final Rulemaking

4. A list of all previous notices appearing in the *Register* addressing the final rule:

Notice of Rulemaking Docket Opening: 11 A.A.R. 414, January 14, 2005

Notice of Proposed Rulemaking: 11 A.A.R. 1969, May 27, 2005

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Mariaelena Ugarte

Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034

Telephone: (602) 417-4693

Fax: (602) 253-9115

E-mail: AHCCCSrules@azahcccs.gov

6. An explanation of the rule, including the agency's reason for initiating the rule:

The rule has been written to comply with the agency's plan of action in the five-year review report. Various provisions were removed from rule because they were found to be only necessary in contract. In addition, the rule was amended for clarity.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

No studies were required or reviewed.

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

AHCCCS anticipates minimal impact.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

No significant changes were made.

11. A summary of the comments made regarding the rule and the agency response to them:

None received

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

R9-22-512, 45 CFR Part 160 and 45 CFR Part 164, October 1, 2004

R9-22-512, 42 CFR 431.300 through 431.307, October 1, 2004

R9-22-512, 45 CFR 164.508, October 1, 2004

R9-22-512, 45 CFR 164.512, October 1, 2004

14. Was this rule previously made as an emergency rule?

No.

Notices of Final Rulemaking

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ADMINISTRATION**

ARTICLE 1. DEFINITIONS

Section

R9-22-105. ~~General Provisions and Standards Related Definitions~~ Repealed

ARTICLE 5. GENERAL PROVISIONS AND STANDARDS

Section

R9-22-501. ~~Pre-existing Conditions~~ General Provisions and Standards - Related Definitions
R9-22-502. ~~Availability and Accessibility of Service~~ Pre-existing Conditions
R9-22-503. ~~Repealed~~ Provider Requirements Regarding Records
R9-22-504. Marketing; Prohibition against Inducements; Misrepresentations; Discrimination; Sanctions
R9-22-505. ~~Approval of Advertisements and Marketing Materials~~ Repealed
R9-22-507. ~~Member Record~~ Repealed
R9-22-508. ~~Limitation of Benefit Coverage for Illness or Injury due to Catastrophe~~ Repealed
R9-22-509. Transition and Coordination of Member Care
R9-22-510. ~~Transfer of Members~~ Repealed
R9-22-511. ~~Fraud or Abuse~~ Repealed
R9-22-512. Release of Safeguarded Information ~~by the Administration and Contractors~~
R9-22-513. ~~Discrimination Prohibition~~ Repealed
R9-22-514. ~~Equal Opportunity~~ Repealed
R9-22-518. Information to Enrolled Members
R9-22-521. Program Compliance Audits
R9-22-522. Quality Management/Utilization Management (QM/UM) Requirements
R9-22-524. ~~Continuity of Care~~ Repealed

ARTICLE 1. DEFINITIONS

R9-22-105. ~~General Provisions and Standards Related Definitions~~ Repealed

In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

“Quality management” means a methodology and activity used by professional health personnel through a formal program involving multiple organizational components and committees to:

Assess the degree of conformance to desired medical standards and practices and;

Improve or maintain quality service and care.

“Utilization management” means a methodology used by professional health personnel that assesses the medical indications, appropriateness, and efficiency of care provided.

ARTICLE 5. GENERAL PROVISIONS AND STANDARDS

R9-22-501. ~~Pre-existing Conditions~~ General Provisions and Standards - Related Definitions

- A.** Except as otherwise provided in Article 3 of this Chapter, a contractor shall be responsible for providing the full scope of covered services to each member from the effective date of eligibility until the time of notification of termination, suspension, or transfer of the member’s enrollment. This responsibility includes providing treatment for all of a member’s pre-existing conditions.
- B.** A contractor or subcontractor shall not adopt or use any procedure to identify individuals who have an existing or anticipated medical or psychiatric condition in order to discourage or exclude the individuals from enrolling in the contractor’s health plan or encourage the individuals to enroll in another health plan.

In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

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“Quality management” means a process used by professional health personnel through a formal program involving multiple organizational components and committees to:

Assess the degree to which services provided conform to desired medical standards and practices; and

Improve or maintain quality service and care.

“Utilization management” means a methodology used by professional health personnel to assess the medical indications, appropriateness, and efficiency of care provided.

R9-22-502. Availability and Accessibility of Service Pre-existing Conditions

A. A contractor shall provide adequate numbers of available and accessible:

1. Institutional facilities;
2. Service locations;
3. Service sites; and
4. Professional, allied, and paramedical personnel for the provision of covered services, including all emergency medical services for 24 hours a day, seven days a week.

B. A contractor shall minimally provide the following:

1. A ratio of primary care providers to adults and children, as specified in contract;
2. A designated emergency services facility, providing care 24 hours a day, seven days a week, accessible to members in each contracted service area. One or more physicians and one or more nurses shall be on call or on duty at the facility at all times;
3. An emergency services system employing at least one physician, registered nurse, physician’s assistant, or nurse practitioner, accessible by telephone 24 hours a day, seven days a week, to members who need information in an emergency, and to providers who need verification of patient membership and treatment authorization;
4. An emergency services call log or database to track the following information:
 - a. Member’s name;
 - b. Address and telephone number;
 - c. Date and time of call;
 - d. Nature of complaint or problem; and
 - e. Instructions given to member.
5. A written procedure for communicating emergency services information to a member’s primary care provider, and other appropriate organizational units;
6. An appointment standard as specified in contract for the following:
 - a. Emergency appointments;
 - b. Urgent care appointments; and
 - c. Routine care appointments.
7. Waiting times for members with appointments that do not exceed 45 minutes, except when the provider is unavailable due to an emergency.

C. A contractor shall have an affiliation with or subcontract with an organization or individual to provide primary care services. The contractor shall agree to provide services under the primary care provider’s guidance and direction:

1. A primary care provider selected by or to whom an enrolled member is assigned shall be responsible for:
 - a. Supervising, coordinating, and providing initial and primary care to the member;
 - b. Initiating referrals for specialty care;
 - c. Maintaining continuity of member care; and
 - d. Maintaining an individual medical record for each assigned member.
2. A primary care provider or specialist providing inpatient services to a member shall have staff privileges in a minimum of one general acute care hospital under subcontract with the contractor, within the service area of the contractor.

A. Except as otherwise provided in Article 3 of this Chapter, a contractor shall be responsible for providing the full scope of covered services to each member from the effective date of eligibility until the termination of enrollment or transfer of the member to another contractor.

B. A contractor or subcontractor shall not adopt or use any procedure to identify a person who has an existing or anticipated medical or psychiatric condition in order to discourage or exclude the person from enrolling in the contractor’s health plan or encourage the person to enroll in another health plan.

R9-22-503. Repealed Provider Requirements Regarding Records

A provider shall maintain and upon request, make available to a contractor and to the Administration, financial, and medical records relating to payment for not less than five years from the date of final payment, or for records relating to costs and expenses to which the Administration has taken exception, five years after the date of final disposition or resolution of the exception. The provider shall maintain records that meet uniform accounting standards and generally accepted practices for maintenance of medical records, including detailed specification of all patient services delivered, the rationale for delivery,

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and the service date.

R9-22-504. Marketing; Prohibition against Inducements; Misrepresentations; Discrimination; Sanctions

- A. A contractor or the contractor's marketing representative shall not offer or give any form of compensation or reward, or engage in any behavior or activity that may be reasonably construed as coercive, to induce or procure AHCCCS enrollment with the contractor. Any marketing solicitation offering a benefit, good, or service, in excess of the covered services in Article 2 ~~shall be~~ is deemed an inducement.
- B. A marketing representative shall not misrepresent itself, the contracting health plan represented, or the AHCCCS program, through false advertising, false statements, or in any other manner to induce ~~an eligible person or a member of another contracting entity~~ contractor to enroll in the represented health plan.
1. ~~The Administration shall deem violations~~ Violations of this subsection ~~to include, but are not be limited to,~~ false or misleading claims, inferences, or representations ~~that such as:~~
- a. ~~An eligible person or A~~ member will lose benefits under the AHCCCS program or lose any other health or welfare benefits to which the ~~eligible person or a member~~ is legally entitled, if the ~~eligible person or member~~ does not enroll in the represented contracting health plan;
- b. Marketing representatives are employees of the state or representatives of the Administration, a county, or any health plan other than the health plan ~~with whom by which~~ they are employed, or by ~~whom which~~ they are reimbursed; and
- c. The represented health plan is recommended or endorsed as superior to its competition by any state or county agency, or any organization, unless the organization has certified its endorsement in writing to the health plan and the Administration.
- C. A marketing representative shall not engage in any marketing or pre-enrollment practice that discriminates against ~~an eligible person or a member~~ because of race, creed, age, color, sex, religion, national origin, ancestry, marital status, sexual preference, physical or mental disability, or health status.
- D. The Administration shall hold a contractor responsible for a violation of this Section resulting from the performance of any marketing representative, subcontractor, ~~or~~ agent, program, or process under ~~its~~ the contractor's employ or direction and shall ~~make the contractor subject to the impose~~ contract sanctions ~~in this Chapter~~ on the contractor as specified in contract.
- E. A contractor shall produce and distribute informational materials that are approved by the Administration to each enrolled member or designated representative after the contractor receives notification of enrollment from the Administration. The contractor shall ensure that the informational materials include:
1. A description of all covered services as specified in contract;
 2. An explanation of service limitations and exclusions;
 3. An explanation of the procedure for obtaining services;
 4. An explanation of the procedure for obtaining emergency services;
 5. An explanation of the procedure for filing a grievance and appeal; and
 6. An explanation of when plan changes may occur as specified in contract.

R9-22-505. Approval of Advertisements and Marketing Materials Repealed

- ~~A. A contractor shall submit its proposed advertisements, marketing materials, and paraphernalia for review and approval by the Administration before distributing the materials or implementing the activities.~~
- ~~B. A contractor shall submit all proposed marketing materials in writing to the Administration.~~
- ~~C. The Administration shall review and approve or disapprove all marketing materials. The Administration shall include a statement of objections and recommendations in a notice of disapproval.~~
- ~~D. To minimize the expense of revising advertising or other copy, a contractor may submit the marketing materials in draft form, subject to final approval and filing of a proof or final copy.~~
- ~~E. A contractor shall provide two copies of the proof or final approved copy of marketing materials to the Administration.~~

R9-22-507. Member Record Repealed

~~A contractor shall maintain a member service record that contains at least the following for each member:~~

- ~~1. Encounter data;~~
- ~~2. Grievances and appeals;~~
- ~~3. Any informal complaints; and~~
- ~~4. Service information.~~

R9-22-508. Limitation of Benefit Coverage for Illness or Injury due to Catastrophe Repealed

~~The Director may limit the scope of health care benefits provided by a prepaid capitated contractor to exclude the care of illness or injury that results from, or is greatly aggravated by, a catastrophic occurrence, including an act of declared or undeclared war, that occurs after enrollment.~~

R9-22-509. Transition and Coordination of Member Care

- A. The Administration shall coordinate and implement disenrollment and re-enrollment procedures when a member's change

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of residency requires a change in contractor.

- B.** A contractor shall assist in the transition of members to and from other AHCCCS contractors.
1. Both the receiving and relinquishing contractor shall:
 - a. Coordinate with the other contractor to facilitate and schedule appointments for medically necessary services for the transitioned member within the Administration's timelines specified in the contract. ~~A contractor's~~ If requested by the Administration, a contractor shall submit the policies and procedures regarding transition of members are subject to the Administration for review and approval by the Administration;
 - b. Assist in the referral of transitioned members to other community health agencies or county medical assistance programs for medically necessary services not covered by the Administration, as appropriate; and
 - c. Develop policies and procedures to be followed when transitioning members who have significant medical conditions; are receiving ongoing services; or have, at the time of the transition, received prior authorization or approval for undelivered, specific services.
 2. The relinquishing contractor shall notify the receiving contractor of relevant information about the member's medical condition and current treatment regimens within the timelines defined in contract;
 3. The relinquishing contractor shall forward medical records and other relevant materials to the receiving contractor. The relinquishing contractor shall bear the cost of reproducing and forwarding medical records and other relevant materials shall be borne by the relinquishing contractor;
 4. Within the contract-specified timelines, the receiving contractor shall ensure that the member selects or is assigned to a primary care provider, and provide the member with:
 - a. Information regarding the contractor's providers,
 - b. Emergency numbers, and
 - c. Instructions about how to obtain ~~new~~ services.
- C.** A contractor shall not use a county or ~~nonprovider~~ noncontracting provider health resource alternative ~~that diminishes to diminish~~ the contractor's contractual responsibility or accountability for providing the full scope of covered services. ~~Referrals made~~ The Administration may impose sanctions as described in contract if a contractor makes referrals to other health agencies ~~by a contractor, primarily to reduce expenditures~~ expenses incurred by the contractor on behalf of its members, may result in the application of sanctions described in this Chapter.
- D.** ~~A contractor may transfer a member from a noncontracting provider to a contracting provider's facility as soon as a transfer will not be harmful to the member's health as authorized by the member's primary care provider or the contractor's Medical Director. A member's plan shall pay the cost of transfer.~~

R9-22-510. Transfer of Members Repealed

~~A contractor shall implement procedures to allow a member to transfer from the primary care provider of record to another primary care provider within the same contracting organization. Criteria for a transfer include, but are not be limited to:~~

- ~~1. Change in the member's health, requiring a different medical focus;~~
- ~~2. Change in the member's residency resulting in difficulty in obtaining services from the assigned primary care provider; or~~
- ~~3. Identification of any problem between the member and the primary care provider, resulting in deterioration of the primary care provider—member relationship.~~

R9-22-511. Fraud or Abuse Repealed

~~A contractor, provider, or nonprovider shall advise the Director or designee immediately, in writing, of any case of suspected fraud or abuse.~~

R9-22-512. Release of Safeguarded Information by the Administration and Contractors

~~**A.** The Administration, contractors, providers, and noncontracting providers shall safeguard information concerning an applicant, eligible person, or member, which includes the following:~~

- ~~1. Name and address;~~
- ~~2. Social Security number;~~
- ~~3. Social and economic conditions or circumstances;~~
- ~~4. Agency evaluation of personal information;~~
- ~~5. Medical data and services, including diagnosis and history of disease or disability;~~
- ~~6. State Data Exchange (SDX) tapes from the U.S. Social Security Administration; and~~
- ~~7. Information system tapes from the Arizona Department of Economic Security.~~

A. The Administration, contractors, providers, and noncontracting providers shall limit the release of safeguarded information to persons or agencies for the following purposes in accordance with 45 CFR Part 160 and 45 CFR Part 164, October 1, 2004, and 42 CFR 431.300 through 431.307, October 1, 2004, incorporated by reference and on file with the Administration and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments:

1. Official purposes directly related to the administration of the AHCCCS program including:
 - a. Establishing eligibility and post-eligibility treatment of income, as applicable;

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- b. Determining the amount of medical assistance;
 - c. Providing services for members;
 - d. Performing evaluations and analysis of AHCCCS operations;
 - e. Filing liens on property as applicable;
 - f. Filing claims on estates, as applicable; and
 - g. Filing, negotiating, and settling medical liens and claims.
 - 2. Law enforcement. The Administration may release safeguarded information without the applicant's or member's written or verbal consent, for the purpose of conducting or assisting an investigation, prosecution, or criminal or civil proceeding related to the administration of the AHCCCS program.
 - 3. The Administration may release safeguarded member information to a review committee in accordance with the provisions of A.R.S. § 36-2917, without the consent of the applicant or member.
- ~~B. The restriction upon disclosure of information does not apply to:~~
 - ~~1. Summary data;~~
 - ~~2. Statistics;~~
 - ~~3. Utilization data; and~~
 - ~~4. Other information that does not identify an applicant, eligible person, or member.~~
- B. Except as provided in subsection (A), the Administration, contractors, providers, and noncontracting providers shall disclose safeguarded information only to:
 - 1. An applicant;
 - 2. A member;
 - 3. An unemancipated minor, with written permission of a parent, custodial relative, or designated representative, if:
 - a. An Administration employee, authorized representative, or responsible caseworker is present during the examination of the safeguarded information; or
 - b. After written notification to the provider, and at a reasonable time and place.
 - 4. Persons authorized by the applicant or member, or
 - 5. A lawful court order or subpoena accompanied by an authorization compliant with 45 CFR 164.508, October 1, 2004, or qualified protective court order as defined by 45 CFR 164.512, October 1, 2004, incorporated by reference and on file with the Administration and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.
- ~~C. The Administration, contractors, providers, and noncontracting providers shall use or disclose information concerning an eligible person, applicant, or member only under the conditions specified in subsection (D), (E), and (F) and only to:~~
 - ~~1. The person concerned;~~
 - ~~2. Individuals authorized by the person concerned, and~~
 - ~~3. Persons or agencies for official purposes.~~
- C. The Administration, contractors, providers, and noncontracting providers shall safeguard identifying information, protected health information as specified in 45 CFR Part 160, and information obtained in the course of application for or redetermination of eligibility concerning an applicant or member, that includes, but is not limited to the following:
 - 1. Name and address;
 - 2. Social Security number;
 - 3. Social and economic conditions or circumstances;
 - 4. Agency evaluation of personal information;
 - 5. Medical data and information concerning medical services received, including diagnosis and history of disease or disability;
 - 6. State Data Exchange (SDX) tapes, and other types of information received from outside sources for the purpose of verifying income eligibility and amount of medical assistance payments; and
 - 7. Any information received in connection with the identification of legally liable third party resources.
- ~~D. Safeguarded information shall be viewed by or released to only:~~
 - ~~1. An applicant;~~
 - ~~2. An eligible person;~~
 - ~~3. A member; or~~
 - ~~4. An unemancipated minor, with written permission of a parent, custodial relative, or designated representative, if:~~
 - ~~a. An Administration employee or its authorized representative, county eligibility official, or responsible caseworker is present during the examination of the eligibility record; or~~
 - ~~b. As outlined in subsection (E) after written notification to the provider, and at a reasonable time and place.~~
- D. The restriction upon disclosure of information in this Section does not apply to:
 - 1. De-identified information as described by 45 CFR Part 164.514, October 1, 2004, incorporated by reference in subsection (A); or
 - 2. A disclosure in response to a request for information that complies with 45 CFR Part 160 and 45 CFR Part 164, October 1, 2004, and 42 CFR 431.300 through 431.307, October 1, 2004, incorporated by reference in subsection (A).

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- ~~E.~~ An eligibility case record, medical record, and any other AHCCCS-related confidential and safeguarded information regarding an eligible person, member, applicant, or unemancipated minor shall be released to individuals authorized by the eligible person, member, applicant, or unemancipated minor only under the following conditions:
- ~~1.~~ Authorization for release of information is obtained from the eligible person, member, applicant, or designated representative;
 - ~~2.~~ Authorization used for release is a written document, separate from any other document, that specifies the following information:
 - ~~a.~~ Information or records, in whole or in part, which are authorized for release;
 - ~~b.~~ To whom release is authorized;
 - ~~c.~~ The period of time for which the authorization is valid, if limited; and
 - ~~d.~~ A dated signature of the adult and mentally competent member, eligible person, applicant, or designated representative. If the eligible person, member, or applicant is a minor, the signature of a parent, custodial relative, or designated representative shall be required unless the minor is sufficiently mature to understand the consequences of granting or denying authorization. If the eligible person, member, or applicant is mentally incompetent, authorization shall be according to A.R.S. § 36-509;
 - ~~3.~~ If an appeal or grievance is filed, the eligible person, member, applicant, or designated representative shall be permitted to review and obtain or copy any nonprivileged record necessary for the proper presentation of the case.
- E. A provider shall furnish records requested by the Administration or a contractor to the Administration or the contractor at no charge.
- ~~F.~~ Release of safeguarded information to individuals or agencies for official purposes:
- ~~1.~~ Official purposes directly related to the administration of the AHCCCS program are:
 - ~~a.~~ Establishing eligibility and post-eligibility treatment of income, as applicable;
 - ~~b.~~ Determining the amount of medical assistance;
 - ~~c.~~ Providing services for eligible persons and members;
 - ~~d.~~ Conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to the AHCCCS program;
 - ~~e.~~ Performing evaluations and analyses of AHCCCS operations;
 - ~~f.~~ Filing liens on property as applicable;
 - ~~g.~~ Filing claims on estates, as applicable; and
 - ~~h.~~ Filing, negotiating, and settling medical liens and claims.
 - ~~2.~~ For official purposes related to the administration of the AHCCCS program and only to the extent required in performance of duties, safeguarded information, including case records and medical records, may be disclosed to the following persons without the consent of the applicant, member, or eligible person:
 - ~~a.~~ Employees of the Administration;
 - ~~b.~~ Employees of the U.S. Social Security Administration;
 - ~~c.~~ Employees of the Arizona Department of Economic Security;
 - ~~d.~~ Employees of the Arizona Department of Health Services;
 - ~~e.~~ Employees of the U.S. Department of Health and Human Services;
 - ~~f.~~ Employees of contractors, program contractors, providers, and subcontractors;
 - ~~g.~~ Employees of the Arizona Attorney General's Office; or
 - ~~h.~~ Employees of counties including Boards of Supervisors, AHCCCS eligibility offices, and the County Attorney, as applicable.
 - ~~3.~~ Law enforcement officials:
 - ~~a.~~ Information may be released to law enforcement officials without the applicant's, eligible person's, or member's written or verbal consent, for the purpose of an investigation, prosecution, or criminal or civil proceeding relating to the administration of the AHCCCS program.
 - ~~b.~~ Medical record. The Administration and contractors shall release safeguarded information contained in a member's medical record to law enforcement officials without the member's consent only if the member is suspected of fraud or abuse against the AHCCCS program.
 - ~~c.~~ A contractor shall release the medical record or information in the case record or other information developed in case management or utilization management operations without the member's written or verbal consent, for the purpose of an investigation, prosecution, or similar criminal proceeding not in connection with the Administration, only if the law enforcement official requesting the information has statutory authority to obtain the information.
 - ~~4.~~ The Administration may release safeguarded information including case records and medical records to a review committee in accordance with the provisions of A.R.S. § 36-2917, without the consent of the applicant, eligible person, or member.
 - ~~5.~~ In accordance with the 1634 Agreement between the State of Arizona and the U.S. Department of Health and Human Services, a recipient of information or records disclosed or used for an official purpose shall comply with the 1634

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Agreement, dated October 1, 1982, incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.

6. Providers shall furnish requested records to the Administration and its contractors at no charge.

G. The holder of a medical record of a former applicant, eligible person, or member shall obtain written consent from the former applicant, eligible person, or member before transmitting the medical record to a primary care provider.

H. Subcontractors are not required to obtain written consent from an eligible person or member before transmitting the eligible person's or member's medical records to a physician who:

1. Provides a service to the eligible person or member under subcontract with the program contractor;
2. Is retained by the subcontractor to provide services that are infrequently used or are of an unusual nature, and
3. Provides a service under the contract.

R9-22-513. ~~Discrimination Prohibition Repealed~~

A. A contractor, provider, and nonprovider shall not discriminate against an eligible person or member because of race, color, creed, religion, ancestry, marital status, sexual preference, national origin, age, sex, or physical or mental disability in accordance with Title VI of the U.S. Civil Rights Act of 1964, 42 U.S.C., Section 2000d, and rules and regulations promulgated according to, or as otherwise provided by law. For the purpose of providing covered service under contract according to A.R.S. Title 36, Ch. 29, discrimination includes, but is not limited to, the following if done on the grounds of the eligible person's or member's race, color, creed, religion, ancestry, marital status, sexual preference, national origin, age, sex, or physical or mental disability:

1. Denying or providing an eligible person or member any covered service or availability of a facility;
2. Providing to an eligible person or member any covered service that is different, or is provided in a different manner or at a different time from that provided to other AHCCCS members under contract, other public or private members, or the public at large except when medically necessary;
3. Subjecting an eligible person or member to segregation or separate treatment in any manner related to the receipt of any covered service; restricting a member in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any covered service; and
4. Assigning to an eligible person or member times or places for the provision of services that are different from those assigned to other AHCCCS members under contract.

B. All provisions in this Section shall not apply to an eligible person defined as eligible according to A.R.S. § 36-2901 (4)(d) through (4)(g), who is not required by statute or these rules to obtain health care services at a county-owned and operated facility, if the health care facility is awarded a contract as an AHCCCS provider. A person eligible according to A.R.S. § 36-2901 (4)(b) shall have freedom of choice in selecting membership with an AHCCCS contractor in all instances in which more than one choice of contractor is available. However, an eligible person shall become a member of a county program and receive services in a county facility, if a county is the only AHCCCS contractor for the eligible person in the service area.

C. A contractor shall take affirmative action to ensure that members are provided covered services without regard to race, color, creed, sex, religion, age, national origin, ancestry, marital status, sexual preference, or physical or mental disability, except where medically indicated.

R9-22-514. ~~Equal Opportunity Repealed~~

A contractor shall, in all solicitations or advertisements for employees placed by, or, on behalf of the contractor:

1. Specify that it is an equal opportunity employer;
2. Send a notice provided by the Administration to each labor union representative or worker with a collective bargaining agreement, or other contract or understanding, stating that the contractor is an equal opportunity employer; and
3. Post copies of the notice in conspicuous places available to employees and applicants for employment.

R9-22-518. ~~Information to Enrolled Members~~

A. Each contractor shall produce and distribute printed ~~information~~ informational materials to each member or family unit within 10 days of receipt of notification of enrollment from the Administration. ~~The information materials shall be written in English and all languages used by 200 members or 5%, whichever is greater, of the enrolled population. The contractor shall ensure that the informational materials must meet the requirements specified in the contractor's current contract.~~

B. A contractor shall provide a member with the name, address, and telephone number of the member's primary care provider within 10 days from the date of enrollment. ~~This notice~~ The contractor shall include information on how the member may change primary care providers, if dissatisfied with the primary care provider assigned.

C. A contractor shall revise and distribute to members a service guide ~~insert~~ describing any change that the contractor proposes to make in services provided or service locations. The insert shall be distributed to all affected members or family units at least 14 days before a planned change. Notification shall be provided as soon as possible when unforeseen circumstances require an immediate change in services, sites or locations.

D. A contractor shall submit informational and educational materials for approval by the Administration before distributing the materials to members and families.

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R9-22-521. Program Compliance Audits

- A. The Administration shall conduct ~~a~~ an onsite program compliance audit of a contractor at least once every 12 months during the term of ~~its~~ the Administration's contract with the contractor. Unless the Administration determines that advance notice will render ~~a~~ the program compliance audit less useful, the Administration shall notify a contractor ~~will be notified~~ approximately three weeks in advance of the date of an onsite program compliance audit. The Administration may conduct, without prior notice, inspections of contractor facilities or perform other elements of a program compliance audit; ~~either in conjunction with the program compliance audit or as part of an unannounced inspection program.~~
- B. ~~A review~~ An audit team may perform any or all of the following procedures:
1. Conduct private interviews and group conferences with members, physicians, ~~and~~ other health professionals, and members of the contractor's administrative staff including, but not limited to, the contractor's principal management persons;
 2. Examine records, books, reports, and papers of the contractor and any management company, and all providers or subcontractors providing health care and other services ~~to the health plan~~. The examination may include, but need not be limited to: minutes of medical staff meetings, peer review and quality of care review records, duty rosters of medical personnel, appointment records, written procedures for the internal operation of the health plan, contracts and correspondence with members and with providers of health care services and other services to the plan, and additional documentation deemed necessary by the Administration to review the quality of medical care.

R9-22-522. Quality Management/Utilization Management (QM/UM) Requirements

- A. A contractor shall comply with Quality Management/Utilization Management (QM/UM) requirements specified in this Section and in contract. The contractor shall ensure compliance with QM/UM requirements that are accomplished through delegation or subcontract with another party.
- B. ~~A~~ In addition to any requirements specified in contract, a contractor shall:
1. ~~Submit to the Administration~~ Submit to the Administration a written QM/UM plan that includes a description of the systems, methodologies, protocols, and procedures to be used in:
 - a. Monitoring and evaluating the types of services provided,
 - b. Identifying the numbers and costs of services provided,
 - c. Assessing and improving the quality and appropriateness of care and services,
 - d. Evaluating the outcome of care provided to members, and
 - e. ~~Determining the steps and~~ Determining the steps and actions necessary to improve service delivery; ;
 2. Submit the QM/UM plan to the Administration on an annual basis within timelines specified in contract. If the QM/UM plan is changed during the year, the contractor shall submit the revised plan to the Administration before implementation;
 3. Receive approval from the Administration before implementing the initial or revised QM/UM plan;
 4. Ensure that a QM/UM committee operates under the control of the contractor's medical director, and includes representation from medical and executive management personnel. The committee shall:
 - a. Oversee the development, revision, and implementation of the QM/UM plan; and
 - b. ~~Ensure and allocate that there are~~ Ensure and allocate qualified QM/UM personnel and sufficient resources to implement the contractor's QM/UM activities; ; and
 5. Ensure that the QM/UM activities include at least:
 - a. Prior authorization for non-emergency or scheduled hospital admissions;
 - b. Concurrent review of inpatient hospitalization;
 - c. Retrospective review of hospital claims;
 - d. Program and provider audits designed to detect over- or under- utilization, service delivery effectiveness, and outcome;
 - e. Medical records audits;
 - f. Surveys to determine satisfaction of members;
 - g. Assessment of the adequacy and qualifications of the contractor's provider network;
 - h. Review and analysis of QM/UM data; and
 - i. Other activities necessary to improve the quality of care and the efficient, cost- effective delivery and utilization of services.
- C. ~~An eligible person's or~~ A member's primary care provider shall maintain medical records that:
1. Are detailed and comprehensive and identify:
 - a. All medically necessary services provided to the member ~~by the contractor and the subcontractors~~, and
 - b. All emergency services provided by ~~nonproviders~~ a noncontracting provider ~~for an eligible person or~~ for a member.
 2. Conform to professional medical standards and practices for documentation of medical diagnostic and treatment data;
 3. Facilitate follow-up treatment; and
 4. Permit professional medical review and medical audit processes.
- D. A subcontractor or ~~its~~ the subcontractor's designee shall forward to the primary care provider medical records or copies of medical records of all members assigned to the subcontractor or for whom the subcontractor has provided services, within

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30 days following termination of a ~~the~~ contract between the subcontractor and the contractor.

- E. The Administration shall monitor ~~contractors~~ each contractor and ~~their~~ the contractor's providers to ensure compliance with Administration QM/UM requirements and adherence to the ~~contractor~~ contractor's QM/UM plan.
1. A contractor and ~~its~~ the contractor's providers shall cooperate with the Administration in the performance of ~~its~~ the Administration's QM/UM monitoring activities; and
 2. A contractor and ~~its~~ the contractor's providers shall develop and implement mechanisms for correcting deficiencies identified through the Administration's QM/UM monitoring.

R9-22-524. ~~Continuity of Care~~ Repealed

~~A contractor shall establish and maintain a system to ensure continuity of care which shall, at a minimum, include:~~

- ~~1. Referring members who need specialty health care services;~~
- ~~2. Monitoring members with chronic medical conditions;~~
- ~~3. Providing hospital discharge planning and coordination including post discharge care; and~~
- ~~4. Monitoring operation of the system through professional review activities.~~

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ARIZONA LONG-TERM CARE SYSTEM

[R05-397]

PREAMBLE

1. Sections Affected

R9-28-101
R9-28-105
R9-28-501
R9-28-502
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R9-28-507
R9-28-510
R9-28-511
R9-28-513
R9-28-514
R9-28-515

Rulemaking Action

Amend
Repeal
New Section
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Repeal

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 36-2903; 36-2903.01

Implementing statute: A.R.S. §§ 36-2903; 36-2903.02; 36-2907; 36-2910; 36-2932; 36-2938

3. The effective date of the rules:

December 5, 2005

4. A list of all previous notices appearing in the *Register* addressing the final rule:

Notice of Rulemaking Docket Opening: 11 A.A.R. 414, January 14, 2005

Notice of Proposed Rulemaking: 11 A.A.R. 1984, May 27, 2005

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Mariaelena Ugarte

Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034

Telephone: (602) 417-4693

Fax: (602) 253-9115

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E-mail: AHCCCSrules@azahcccs.gov

6. An explanation of the rule, including the agency's reason for initiating the rule:

The rule has been written to comply with the plan of action in the agency's five-year report. Various provisions were removed from rule because they were found to be only necessary in contract. In addition, the rules were amended for clarity.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

No studies were reviewed.

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

AHCCCS anticipates minimal impact.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

No significant changes were made.

11. A summary of the comments made regarding the rule and the agency response to them:

None received

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

R9-28-503(A) - 42 CFR 442, as of October 1, 2004

R9-28-503(A) - 42 CFR 483, as of October 1, 2004

R9-28-503(B) - 42 CFR 442, Subpart C, as of October 1, 2004

R9-28-503(B) - 42 CFR 483, as of October 1, 2004

R9-28-505 - 42 CFR 482, as of October 1, 2004

R9-28-505 - 42 CFR 456, Subpart C, as of October 1, 2004

14. Was this rule previously made as an emergency rule?

No.

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ARIZONA LONG-TERM CARE SYSTEM**

ARTICLE 1. DEFINITIONS

Section

R9-28-101. General Definitions

R9-28-105. ~~Program Contractor and Provider Standards Related Definitions~~ Repealed

ARTICLE 5. PROGRAM CONTRACTOR AND PROVIDER STANDARDS

Section

R9-28-501. ~~Repealed Program Contractor and Provider Standards - related Definitions~~

R9-28-502. Long-term Care Provider Requirements

R9-28-503. Licensure and Certification for Long-term Care Institutional Facilities

R9-28-504. Standards of Participation, Licensure, and Certification for HCBS Providers

R9-28-505. Standards, Licensure, and Certification for Providers of Hospital and Medical Services

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R9-28-507.	Program Contractor General Requirements
R9-28-510.	Case Management
R9-28-511.	Quality Management/Utilization Management (QM/UM) Requirements
R9-28-513.	Program Compliance Audits
R9-28-514.	Release of Safeguarded Information by the Administration and Contractors
R9-28-515.	Discrimination prohibition and equal opportunity <u>Repealed</u>

ARTICLE 1. DEFINITIONS

R9-28-101. General Definitions

A. Location of definitions. Definitions applicable to Chapter 28 are found in the following:

Definition	Section or Citation
"Administration"	A.R.S. § 36-2931
"ADHS"	R9-22-112
"Aggregate"	R9-22-701
"AHCCCS"	R9-22-101
"AHCCCS registered provider"	R9-22-101
"Algorithm"	R9-28-104
"ALTCS"	R9-28-101
"ALTCS acute care services"	R9-28-104
"Alternative HCBS setting"	R9-28-101
"Ambulance"	A.R.S. § 36-2201
"Applicant"	R9-22-101
"Bed hold"	R9-28-102
"Behavior intervention"	R9-28-102
"Behavior management services"	R9-22-112
"Behavioral health evaluation"	R9-22-112
"Behavioral health medical practitioner"	R9-22-112
"Behavioral health professional"	R9-20-101
"Behavioral health service"	R9-20-101
"Behavioral health technician"	R9-20-101
"Billed charges"	R9-22-701
"Board-eligible for psychiatry"	R9-22-112
"Capped fee-for-service"	R9-22-101
"Case management plan"	R9-28-101
"Case manager"	R9-28-101
"Case record"	R9-22-101
"Categorically-eligible"	R9-22-101
"Certification"	R9-28-105 <u>R9-28-501</u>
"Certified psychiatric nurse practitioner"	R9-22-112
"CFR"	R9-28-101
"Clean claim"	A.R.S. § 36-2904
"Clinical supervision"	R9-22-112
"CMS"	R9-22-101
"Community spouse"	R9-28-104
"Contract"	R9-22-101
"Contract year"	R9-28-101
"Contractor"	A.R.S. § 36-2901
"County of fiscal responsibility"	R9-28-701
"Covered services"	R9-28-101
"CPT"	R9-22-701
"CSRD"	R9-28-104
"Day"	R9-22-101
"Department"	A.R.S. § 36-2901
"De novo hearing"	42 CFR 431.201
"Developmental disability"	A.R.S. § 36-551
"Diagnostic services"	R9-22-102
"Director"	R9-22-101

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"Disenrollment"	R9-22-117
"DME"	R9-22-102
"EPD"	R9-28-301
"Eligible person"	A.R.S. § 36-2931
"Emergency medical services"	R9-22-102
"Encounter"	R9-22-701
"Enrollment"	R9-22-117
"Estate"	A.R.S. § 14-1201
"Facility"	R9-22-101
"Factor"	42 CFR 447.10
"Fair consideration"	R9-28-104
"FBR"	R9-22-101
"Fee-For-Service" or "FFS"	R9-28-101
"Grievance"	R9-34-202
"GSA"	R9-22-101
"Guardian"	A.R.S. § 14-5311
"HCBS" or "Home and community based services"	A.R.S. §§ 36-2931 and 36-2939
"Health care practitioner"	R9-22-112
"Home"	R9-28-101
"Home health services"	R9-22-102
"Hospital"	R9-22-101
"ICF-MR" or "Intermediate care facility for the mentally retarded"	42 CFR 483 Subpart I
"IHS"	R9-28-101
"IMD" or "Institution for mental diseases"	42 CFR 435.1009
"Institutionalized"	R9-28-104
"Interested Party"	R9-28-106
"JCAHO"	R9-28-101
"License" or "licensure"	R9-22-101
"Medical record"	R9-22-101
"Medical services"	<u>A.R.S. § 36-401</u>
"Medical supplies"	R9-22-102
"Medically eligible"	R9-28-104
"Medically necessary"	R9-22-101
"Member"	A.R.S. § 36-2931
"Mental disorder"	A.R.S. § 36-501
"MMMNA"	R9-28-104
"Nursing facility" or "NF"	42 U.S.C. 1396r(a)
"Noncontracting provider"	A.R.S. § 36-2931
"Occupational therapy"	R9-22-102
"Partial care"	R9-22-112
"PAS"	R9-28-103
"Pharmaceutical service"	R9-22-102
"Physical therapy"	R9-22-102
"Physician"	R9-22-102
"Post-stabilization care services"	42 CFR 438.114
"Practitioner"	R9-22-102
"Primary care provider (PCP)"	R9-22-102
"Primary care provider services"	R9-22-102
"Prior authorization"	R9-22-102
"Prior period coverage" or "PPC"	R9-22-701
"Private duty nursing services"	R9-22-102
"Program contractor"	A.R.S. § 36-2931
"Provider"	A.R.S. § 36-2931
"Psychiatrist"	R9-22-112
"Psychologist"	R9-22-112
"Psychosocial rehabilitation"	

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services”	R9-22-112
“Quality management”	R9-22-105 <u>R9-22-501</u>
“Regional behavioral health authority”	
or “RBHA”	A.R.S. § 36-3401
“Radiology”	R9-22-102
“Reassessment”	R9-28-103
“Redetermination”	R9-28-104
“Referral”	R9-22-101
“Reinsurance”	R9-22-701
“Representative”	R9-28-104
“Respiratory therapy”	R9-22-102
“Respite care”	R9-28-102
“RFP”	R9-22-106
“Room and board”	R9-28-102
“Scope of services”	R9-28-102
“Section 1115 Waiver”	A.R.S. § 36-2901
“Speech therapy”	R9-22-102
“Spouse”	R9-28-104
“SSA”	42 CFR 1000.10
“SSI”	42 CFR 435.4
“Subcontract”	R9-22-101
<u>“Therapeutic Leave”</u>	<u>R9-28-501</u>
“Utilization management”	R9-22-105 <u>R9-22-501</u>
“Ventilator dependent”	R9-28-102

- B. General definitions.** In addition to definitions contained in A.R.S. §§ 36-551, 36-2901, 36-2931, and 9 A.A.C. 22, Article 1, the following words and phrases have the following meanings unless the context of the Chapter explicitly requires another meaning:

“ALTCs” means the Arizona Long-term Care System as authorized by A.R.S. § 36-2932.

“Alternative HCBS setting” means a living arrangement approved by the Director and licensed or certified by a regulatory agency of the state, where a member may reside and receive HCBS including:

For a person with a developmental disability specified in A.R.S. § 36-551:

Community residential setting defined in A.R.S. § 36-551;

Group home defined in A.R.S. § 36-551;

State-operated group home under A.R.S. § 36-591;

Group foster home under R6-5-5903;

Licensed residential facility for a person with traumatic brain injury under A.R.S. § 36-2939;

Adult therapeutic foster home under 9 A.A.C. 20, Articles 1 and 15;

Level 2 and Level 3 behavioral health residential agencies under 9 A.A.C. 20, Articles 1, 4, 5, and 6; and

Rural substance abuse transitional center under 9 A.A.C. 20, Articles 1 and 14; and

For a person who is elderly or physically disabled under R9-28-301, and the facility, setting, or institution is registered with AHCCCS:

Adult foster care defined in A.R.S. § 36-401 and as authorized in A.R.S. § 36-2939;

Assisted living home or assisted living center, units only, under A.R.S. § 36-401, and as authorized in A.R.S. § 36-2939;

Licensed residential facility for a person with a traumatic brain injury specified in A.R.S. § 36-2939;

Adult therapeutic foster home under 9 A.A.C. 20, Articles 1 and 15;

Level 2 and Level 3 behavioral health residential agencies under 9 A.A.C. 20, Articles 1, 4, 5, and 6;

Rural Substance Abuse Transitional Agencies under 9 A.A.C. 20, Articles 1 and 14; and

Alzheimer’s treatment assistive living facility as specified in Laws 1999, Ch. 313, § 35 as amended by Laws 2001, Ch. 140, § 1 and Laws 2003, Ch. 76, § 1.

“Case management plan” means a service plan developed by a case manager that involves the overall management of a member’s care, and the continued monitoring and reassessment of the member’s need for services.

“Case manager” means a person who is either a degreed social worker, a licensed registered nurse, or a person with a min-

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imum of two years of experience in providing case management services to a person who is elderly and physically disabled or has developmental disabilities.

“Contract year” means the period beginning on October 1 and continuing until September 30 of the following year.

“CFR” means Code of Federal Regulations, unless otherwise specified in this Chapter.

“Covered services” means the health and medical services described in Articles 2 and 11 of this Chapter as being eligible for reimbursement by AHCCCS.

“Fee-For-Service” or “FFS” means a method of payment to an AHCCCS registered provider on an amount-per-service basis.

“Home” means a residential dwelling that is owned, rented, leased, or occupied by a member, at no cost to the member, including a house, a mobile home, an apartment, or other similar shelter. A home is not a facility, a setting, or an institution, or a portion of any of these that is licensed or certified by a regulatory agency of the state as a:

Health care institution under A.R.S. § 36-401;

Residential care institution under A.R.S. § 36-401;

Community residential setting under A.R.S. § 36-551; or

Behavioral health service under 9 A.A.C. 20, Articles 1, 4, 5, and 6.

“IHS” means the Indian Health Service.

“JCAHO” means the Joint Commission on Accreditation of Healthcare Organizations.

R9-28-105. ~~Program Contractor and Provider Standards Related Definitions Repealed~~

~~Definitions. The following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, have the following meanings unless the context of the Chapter explicitly requires another meaning:~~

- ~~1. “Certification” means a voluntary process by which a federal or state regulatory entity grants recognition to an individual, facility, or organization which has met certain prerequisite qualifications specified by the regulatory entity and which may assume or use the word “certified” in his, her, or its title or designation to perform prescribed health professional tasks.~~
- ~~2. “Quality management” is defined in 9 A.A.C. 22, Article 1.~~
- ~~3. “Utilization management” is defined in 9 A.A.C. 22, Article 1.~~

ARTICLE 5. PROGRAM CONTRACTOR AND PROVIDER STANDARDS

R9-28-501. ~~Repealed Program Contractor and Provider Standards - related Definitions~~

~~Definitions. The following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, have the following meanings unless the context of the Chapter explicitly requires another meaning:~~

- ~~1. “Certification” means a voluntary process by which a federal or state regulatory entity grants recognition to a person, facility, or organization that has met certain qualifications specified by the regulatory entity, allowing the person, facility, or organization to use the word “certified” in a title or designation.~~
- ~~2. “Therapeutic leave” means when a member leaves an institutional facility for a period of time. That time cannot exceed nine days per contract year.~~

R9-28-502. Long-term Care Provider Requirements

- ~~A. A provider shall obtain any necessary authorization from the program contractor or the Administration for services provided to an ALTCS eligible person or a member.~~
- ~~B. A provider shall maintain and make available to a program contractor and to the Administration, financial, and medical records for not less than five years from the date of final payment, or for records relating to costs and expenses to which the Administration has taken exception, five years after the date of final disposition or resolution of the exception. The records shall meet the uniform accounting standards as specified by the Administration, and accepted practices for maintenance of medical records, including detailed specification of all patient services delivered, the rationale for delivery, and the service date. The provider shall maintain records that meet uniform accounting standards and generally accepted practices for maintenance of medical records, including detailed specification of all patient services delivered, the rationale for delivery, and the service date.~~
- ~~C. A provider shall not submit a claim, demand, or otherwise collect payment from an eligible person or member for ALTCS covered services paid to the provider by the Administration or program contractor. A provider shall not bill or attempt to collect payment, directly or through a collection agency, from a person claiming to be ALTCS eligible without first receiving verification from the Administration that the person was ineligible for ALTCS on the date of service, or that services provided were not ALTCS covered services.~~

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R9-28-503. Licensure and Certification for Long-term Care Institutional Facilities

- A. ~~Nursing facilities that~~ A nursing facility shall not provide services to ~~an eligible person or a member shall be~~ , unless the facility is Medicare- and Medicaid- certified and meet, ~~meets~~ the requirements in 42 CFR 442, ~~September 28, 1995 as of~~ October 1, 2004, and 42 CFR 483, ~~September 29, 1995 as of~~ October 1, 2004, incorporated by reference ~~and~~ , on file with the Administration and the Office of the Secretary of State, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401, and ~~meet the Arizona Department of Health Services' rules for licensure~~ licensed by Arizona Department of Health Services. This incorporation by reference contains no future editions or amendments.
- B. An ICF-MR ~~shall be~~ shall not provide services to a member unless the ICF-MR is Medicaid certified and ~~meet~~ meets the requirements in A.R.S. § 36-2939(B)(1) and 42 CFR 442, Subpart C, ~~November 20, 1992 as of~~ October 1, 2004, and 42 CFR 483, ~~September 29, 1995 as of~~ October 1, 2004, incorporated by reference ~~and~~ , on file with the Administration and the Office of the Secretary of State and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.
- ~~C. All nursing facilities and ICF-MRs that provide services to an eligible person or member shall be registered as providers with the Administration. To be registered, a provider shall meet the licensure and certification requirements of subsections (A) or (B) and have a current provider agreement with a program contractor.~~
- C. A nursing facility or ICF-MR that provides services to a member shall register as a provider with the Administration to receive reimbursement. The Administration shall not register a provider unless the provider meets the licensure and certification requirements of subsections (A) or (B) and has a current provider agreement with a program contractor.

R9-28-504. Standards of Participation, Licensure, and Certification for HCBS Providers

- ~~A. All noninstitutional long-term care providers shall be registered with the Administration and meet the requirements of the Arizona Department of Health Services' rules for licensure, if applicable.~~
- A. A noninstitutional long-term care provider shall not register with the Administration unless the provider meets the requirements of the Arizona Department of Health Services' rules for licensure, if applicable.
- B. Additional qualifications to provide services to a member:
1. A community residential setting and a group home for ~~an individual~~ a person with developmental disabilities shall be licensed by the appropriate regulatory agency of the state ~~according to 6 A.A.C. 6 as described in A.A.C. R9-33-107 and A.A.C. R6-6-714~~;
 2. An adult foster care home shall be certified or licensed ~~according to~~ under 9 A.A.C. 10;
 3. A home health ~~service~~ agency shall be Medicare-certified and licensed ~~according to~~ under 9 A.A.C. 10;
 4. ~~An individual~~ A person providing a homemaker service shall meet the requirements specified in the contract between the person and the Administration;
 5. ~~An individual~~ A person providing a personal care service shall meet the requirements specified in the contract between the person and the Administration;
 6. An adult day health ~~care~~ provider shall be licensed ~~according to~~ under 9 A.A.C. 10;
 7. A therapy provider shall meet the following requirements:
 - a. A physical therapy provider shall meet the requirements in 4 A.A.C. 24;
 - ~~b. A speech therapy provider shall be certified by the American Speech, Language, and Hearing Association;~~
 - b. A speech therapist provider shall meet the applicable requirements under 9 A.A.C. 16, Article 2.
 - c. An occupational therapy provider shall meet the requirements in 4 A.A.C. 43; and
 - d. A respiratory therapy provider shall meet the requirements in 4 A.A.C. 45;
 8. A respite provider shall meet the requirements specified in contract;
 9. A hospice provider shall be Medicare-certified and licensed ~~according to~~ under 9 A.A.C. 10;
 10. A provider of home-delivered meal service shall comply with ~~hygiene~~ the requirements in 9 A.A.C. 8;
 11. A provider of non-emergency transportation shall be licensed by the Arizona Department of Transportation, Motor Vehicle Division;
 12. A provider of emergency transportation shall meet the licensure requirements in 9 A.A.C. 13;
 13. A day care provider for the developmentally disabled under A.R.S. § 36-2939 shall meet the licensure requirements in 6 A.A.C. 6;
 14. A habilitation provider shall meet the requirements in A.A.C. R6-6-1523 or the therapy requirements in this Section;
 - ~~15. Another service provider approved by the director shall meet the requirements specified in a program contractor's contract with the Administration;~~
 15. A service provider, other than a provider specified in subsections (B)(1) through (B)(14), approved by the Director shall meet the requirements specified in a program contractor's contract with the Administration;
 16. A behavioral health provider shall have all applicable state licenses or certifications; and meet the service specifications in A.A.C. R9-22-1205; and
 17. An assisted living home or a residential unit shall meet the requirements as defined in A.R.S. § 36-401 and as authorized in A.R.S. § 36-2939.

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R9-28-505. Standards, Licensure, and Certification for Providers of Hospital and Medical Services

- A. A provider of hospital and medical care services shall be registered with the Administration to receive reimbursement.
- ~~B. With the exception of an Indian Health Service (IHS) hospital and a Veterans Administration hospital, which must be Joint Commission on Accreditation of Healthcare Organizations (JCAHO) accredited, a provider of hospital services shall be licensed by the Arizona Department of Health Services, be JCAHO accredited, and meet the requirements in 42 CFR 482, September 9, 1996, and 42 CFR 456(C), September 29, 1978 incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation contains no future editions or amendments.~~
- B. A provider shall not provide hospital services to a member unless the hospital is licensed by the Arizona Department of Health Service, and meets the requirements in 42 CFR 482, as of October 1, 2004, and 42 CFR 456 Subpart C, as of October 1, 2004, incorporated by reference, on file with the Administration and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation contains no future editions or amendments. An Indian Health Service (IHS) hospital and a Veterans Administration hospital shall not provide services to a member unless accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

R9-28-507. Program Contractor General Requirements

- A. To participate in the ALTCS program, through a program contractor or directly through the Administration, a provider of ALTCS-covered services shall be registered with the Administration.
- B. An ALTCS program contractor shall ensure that providers of service meet the requirements of this Article.
- ~~C. Each ALTCS program contractor shall maintain member service records for five years, -These shall that include, at a minimum, a case management plan, medical records, encounter data, grievances, complaints, and service information for each ALTCS member. A program contractor shall ensure that all member service records are retained for five years from the date of final payment. For records relating to costs and expenses to which the Administration has taken exception, member service records are retained for five years after the date of final disposition or resolution of the exception. A program contractor shall provide ALTCS member service records or copies of member service records to the Administration upon request.~~
- D. An ALTCS program contractor shall produce and distribute ~~information~~ informational materials that are approved by the Administration to each enrolled ALTCS member or designated representative within 12 business days after ~~receipt of the program contractor receives~~ notification of enrollment from the Administration. ~~The information, which shall be approved by the Administration before distribution, shall~~ The program contractor shall ensure that the informational materials include:
1. A description of all covered services as specified in contract;
 2. An explanation of service limitations and exclusions;
 3. An explanation of the procedure for obtaining services, including a notice stating that the program contractor is liable only for those services authorized by an ALTCS member's case manager;
 4. An explanation of the procedure for obtaining emergency services;
 5. An explanation of the procedure for filing a grievance and appeal; and
 6. An explanation of when plan changes may occur as specified in contract.
- ~~E. An ALTCS program contractor shall submit encounter reports on services rendered to each member within 120 days after the month of service, except for services with Medicare coverage, which shall be submitted within 180 days after the month of service.~~
- ~~F. An ALTCS program contractor or subcontractor shall collect the member's share of cost and report the amount collected as specified in their contract to the program contractor or Administration, if necessary.~~
- E. A subcontractor shall collect the member's share of cost and report to the program contractor the amount collected as specified in the subcontractor contract. The program contractor shall report the share of cost collected to the Administration.
- ~~GE. An ALTCS program contractor shall monitor a trust fund account for an institutionalized ALTCS member to verify that expenditures from the member's trust fund account are in compliance with federal regulations 42 U.S.C. 1396p(d)(4) and A.R.S. § 36-2934.01.~~
- ~~HG. A program contractor shall ensure that an institutionalized ALTCS member transferred to an acute care facility for to receive services is, whenever possible, returned to the original institution upon completion of acute care.~~
- HH. A program contractor shall ensure that an institutionalized ALTCS member granted therapeutic leave is, whenever medically appropriate, returned to the same bed in the original institution upon completion of the therapeutic leave.
- ~~JI. A program contractor shall ensure that services are paid under A.A.C. R9-22-705.~~
- ~~KJ. An EPD A program contractor shall meet comply with the marketing provisions in A.A.C. R9-22-505 R9-22-504.~~

R9-28-510. Case Management

- ~~A. Each eligible person and member shall be assigned a case manager to:~~
- ~~1. Identify,~~
 - ~~2. Plan,~~
 - ~~3. Coordinate,~~

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4. Monitor, and
 5. Reassess the need for and provision of long-term care services.
- A.** A program contractor shall assign to each member a case manager to identify, plan, coordinate, monitor, and reassess the need for and provision of long-term care services.
- B.** The case manager shall:
1. Ensure that appropriate ALTCS placement and services are provided for an eligible person or member within 30 days of notification of enrollment;
 2. Complete a case management plan when an eligible person or member is enrolled in ALTCS. The case manager shall re-evaluate and revise the plan when the eligible person or member:
 - a. Transfers to another facility;
 - b. Transfers to a hospital;
 - c. Has a change in the in-home service package; or
 - d. Has a change in the level of care.
 3. Specify the services to be received by an eligible person or member, including the:
 - a. Duration;
 - b. Scope of services;
 - c. Units of service;
 - d. Frequency of service delivery;
 - e. Provider of services; and
 - f. Effective time period.
 4. Authorize services for an eligible person or member who continues to be financially and medically eligible for services;
 5. Coordinate with a primary care provider in determining the necessary services for an eligible person or member, including hospital and medical services;
 6. Ensure that an eligible person or member participates in the preparation of the eligible person's or member's case management plan;
 7. Assist an eligible person or member to maintain or progress toward the highest level of functioning;
 8. Monitor receipt of services by an eligible person or member;
 9. Initiate a transfer to AHCCCS or other programs, where appropriate, when ALTCS HCBS services are no longer necessary;
 10. Submit written justification to the case manager's supervisor to include HCBS in the case management plan, if the services exceed 80% of the institutional cost;
 11. Ensure that records are transferred when an eligible person or member is transferred from a facility or provider to a new facility or provider;
 12. Perform additional monitoring of an eligible person or member with rehabilitation potential, whose condition is fragile or unstable, whose case management plan is marginally cost effective, or whose use of medical and hospital services is unusual;
 13. Revise a case management plan for an eligible person or member according to the terms of the contract; and
 14. Arrange behavioral health services if necessary and, if the case manager does not meet the definition of a behavioral health professional according to A.A.C. R9-22-1201, have initial and quarterly consultation and collaboration with a behavioral health professional to review the treatment plan.
- B.** A case manager shall:
1. Ensure that appropriate ALTCS placement and services are provided for a member within 30 days of enrollment;
 2. Develop a service plan by:
 - a. Completing a case management plan when a member is enrolled in ALTCS and authorizing services for a member who continues to be financially and medically eligible for services;
 - b. Ensuring that a member participates in the preparation of the member's case management plan;
 - c. Specifying the services to be received by the member, including the duration, scope of services, units of service, frequency of service delivery, provider of services, and effective time period; and
 - d. Coordinating with the primary care provider in determining the necessary services for the member, including hospital and medical services;
 3. Submit a written justification to the case manager's supervisor to include HCBS in the case management plan if the services exceed 80 percent of the institutional cost;
 4. Manage a case management plan by:
 - a. Re-evaluating and revising the case management plan when the member transfers to another facility, transfers to a hospital, has a change in level of care; and
 - b. Monitoring receipt of services by a member;
 5. Assist the member to maintain or progress toward the highest level of functioning;
 6. Ensure that records are transferred when the member is transferred from a facility or provider to a new facility or pro-

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vider:

7. Perform additional monitoring of a member with rehabilitation potential and whose condition is fragile or unstable, whose case management plan is marginally cost effective, or whose use of medical and hospital services is unusual;
 8. Arrange behavioral health services, if necessary. The case manager shall have initial and quarterly consultation and collaboration with a behavioral health professional to review the treatment plan, unless the case manager meets the definition of a behavioral health professional under A.A.C. R9-20-101.
- ~~E. A program contractor shall submit the initial case management plan and all revisions to the Administration within 14 days of initially preparing or revising the plan.~~
- C. A program contractor shall submit a service plan and other information related to the case management plan upon request to the Administration.

R9-28-511. Quality Management/Utilization Management (QM/UM) Requirements

A program contractor shall:

1. Comply with all requirements specified in A.A.C. R9-22-522; and
2. Submit a quarterly utilization control report within time lines specified in contract, and ~~specified~~ meet the requirements in 42 CFR 456 Subparts C, D, and F, ~~December 1, 1986, October 1, 2004, incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.~~ in R9-28-505.

R9-28-513. Program Compliance Audits

The Administration ~~and its contractors~~ shall meet the requirements specified ~~in~~ under A.A.C. R9-22-521 for ~~an ALTCS eligible person or member~~ a program contractor.

R9-28-514. Release of Safeguarded Information by the Administration and Contractors

The Administration, program contractors, providers, and noncontracting providers shall meet the requirements specified ~~in~~ under A.A.C. R9-22-512 for an ALTCS applicant, ~~eligible person,~~ or member.

R9-28-515. ~~Discrimination prohibition and equal opportunity~~ Repealed

~~The program contractor and provider shall comply with discrimination prohibitions and equal opportunity requirements as set forth in A.A.C. R9-22-513 and R9-22-514.~~

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 31. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
CHILDREN'S HEALTH INSURANCE PROGRAM

[R05-389]

PREAMBLE

1. Sections Affected

R9-31-101
R9-31-105
R9-31-501
R9-31-502
R9-31-502
R9-31-504
R9-31-505
R9-31-507
R9-31-508
R9-31-509
R9-31-510
R9-31-511
R9-31-512
R9-31-513
R9-31-514
R9-31-518
R9-31-520
R9-31-521

Rulemaking Action

Amend
Repeal
Amend
Repeal
New Section
Amend
Repeal
Repeal
Repeal
Amend
Repeal
Repeal
Amend
Repeal
Repeal
Amend
Repeal
Repeal

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R9-31-522	Amend
R9-31-523	Repeal
R9-31-524	Repeal

- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 36-2903; 36-2903.01
Implementing statute: A.R.S. §§ 36-2903; 36-2903.02; 36-2907; 36-2910; 36-2932; 36-2938
- 3. The effective date of the rules:**
December 5, 2005
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 11 A.A.R. 415, January 14, 2005
Notice of Proposed Rulemaking: 11 A.A.R. 1993, May 27, 2005
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Mariaelena Ugarte
Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4693
Fax: (602) 253-9115
E-mail: AHCCCSrules@azahcccs.gov
- 6. An explanation of the rule, including the agency's reason for initiating the rule:**
The rules have been written to comply with the plan of action in the agency's five-year review report. Various provisions were removed from rule because they were found to be only necessary in contract. In addition, the rules were amended for clarity.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
No studies were reviewed.
- 8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable
- 9. The summary of the economic, small business, and consumer impact:**
AHCCCS anticipates minimal impact.
- 10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**
No significant changes were made.
- 11. A summary of the comments made regarding the rule and the agency response to them:**
None received
- 12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
None
- 13. Incorporations by reference and their location in the rules:**
None
- 14. Was this rule previously made as an emergency rule?**
No.

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15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 31. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
CHILDREN'S HEALTH INSURANCE PROGRAM**

ARTICLE 1. DEFINITIONS

Section

R9-31-101. Location of Definitions

R9-31-105. ~~General Provisions and Standards~~ Repealed

ARTICLE 5. GENERAL PROVISIONS AND STANDARDS

Section

R9-31-501. General Provisions ~~and Standards~~ - related Definitions

R9-31-502. ~~Availability and Accessibility of Service~~ Pre-existing Conditions

R9-31-504. Marketing; Prohibition against Inducements; Misrepresentations; Discrimination; Sanctions

R9-31-505. ~~Approval of Advertisements and Marketing Materials~~ Repealed

R9-31-507. ~~Member Record~~ Repealed

R9-31-508. ~~Limitation of Benefit Coverage for Illness or Injury due to Catastrophe~~ Repealed

R9-31-509. Transition and Coordination of Member Care

R9-31-510. ~~Transfer of Members~~ Repealed

R9-31-511. ~~Fraud or Abuse~~ Repealed

R9-31-512. Release of Safeguarded Information ~~by the Administration and Contractors~~

R9-31-513. ~~Discrimination Prohibition~~ Repealed

R9-31-514. ~~Equal Opportunity~~ Repealed

R9-31-518. Information to Enrolled Members

R9-31-520. ~~Financial Statements, Periodic Reports, and Information~~ Repealed

R9-31-521. ~~Program Compliance Audits~~ Repealed

R9-31-522. Quality Management/Utilization Management (QM/UM) Requirements

R9-31-523. ~~Financial Resources~~ Repealed

R9-31-524. ~~Continuity of Care~~ Repealed

ARTICLE 1. DEFINITIONS

R9-31-101. Location of Definitions

A. Location of definitions. Definitions applicable to 9 A.A.C. 31 are found in the following.

Definition	Section or Citation
"ADHS"	R9-31-112
"Administration"	A.R.S. § 36-2901
"Adverse action"	R9-31-108 <u>R9-34-102</u>
"Aggregate"	R9-22-107 <u>R9-22-701</u>
"AHCCCS"	R9-31-101
"AHCCCS registered provider"	R9-22-101
"Ambulance"	R9-22-102
" <u>American Indian</u> "	<u>R9-31-101</u>
"Ancillary department"	R9-22-107 <u>R9-22-701</u>
"Applicant"	R9-31-101
"Application"	R9-31-101
"Behavior management service"	R9-31-112
"Behavioral health professional"	R9-31-112
"Behavioral health evaluation"	R9-31-112
"Behavioral health medical practitioner"	R9-31-112
"Behavioral health service"	R9-31-112
"Behavioral health technician"	R9-20-101
"Billed charges"	R9-22-107 <u>R9-22-701</u>

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"Board-eligible for psychiatry"	R9-31-112
"Capital costs"	R9-22-107 <u>R9-22-701</u>
"Certified nurse practitioner"	R9-31-102
"Certified psychiatric nurse practitioner"	R9-31-112
"Child"	42 U.S.C. 1397jj
"Chronically ill"	A.R.S. § 36-2983
"Clean claim"	A.R.S. § 36-2904
"Clinical supervision"	R9-31-112
"CMDP"	R9-31-103
"Continuous stay"	R9-22-101
"Contract"	R9-22-101
"Contractor"	A.R.S. § 36-2901
"Contract year"	R9-31-101
"Copayment"	R9-22-107 <u>R9-22-701</u>
"Cost avoidance"	R9-31-110 <u>R9-22-1001</u>
"Cost-to-charge ratio"	R9-22-107 <u>R9-22-701</u>
"Covered charges"	R9-31-107
"Covered services"	R9-22-102
"CPT"	R9-22-107 <u>R9-22-701</u>
"CRS"	R9-31-103
"Date of eligibility posting"	R9-22-107 <u>R9-22-701</u>
"Day"	R9-22-101
"De novo hearing"	42 CFR 431.201
"Dentures"	R9-22-102
"DES"	R9-31-103
"Determination"	R9-31-103
"Diagnostic services"	R9-22-102
"Director"	A.R.S. § 36-2981
"DME"	R9-22-102
"DRI inflation factor"	R9-22-107 <u>R9-22-701</u>
"Emergency medical condition"	42 U.S.C. 1396b(v)
"Emergency medical services"	R9-22-102
"Encounter"	R9-22-107 <u>R9-22-701</u>
"Enrollment"	R9-31-103
"Experimental services"	R9-22-101
"Facility"	R9-22-101
"Factor"	R9-22-101
"First-party liability"	R9-22-110 <u>R9-22-1001</u>
" <u>Federal Poverty Level or FPL</u> "	A.R.S. § 36-2981
"Grievance"	R9-22-108 <u>R9-34-202</u>
"Group Health Plan"	42 U.S.C. 1397jj
"GSA"	R9-22-101
"Head of Household"	R9-31-103
"Health care practitioner"	R9-31-112
" Hearing "	R9-22-108
"Hearing aid"	R9-22-102
"Home health services"	R9-22-102
"Hospital"	R9-22-101
"Household income"	R9-31-103
"ICU"	R9-22-107 <u>R9-22-701</u>
"IGA"	R9-31-116
"IHS"	R9-31-116
"IHS" or "Tribal Facility Provider"	R9-31-116
" <u>Indian</u> "	<u>42 CFR 137.10</u>
"Information"	R9-31-103
" <u>Institution for Mental Diseases</u> " or "IMD"	42 CFR 435.1009 and R9-22-112
"Inmate of a public institution"	42 CFR 435.1009
"Inpatient hospital services"	R9-31-101

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"License" or "licensure"	R9-22-101
"Medical record"	R9-22-101
"Medical review"	R9-31-107
"Medical services"	R9-22-101
"Medical supplies"	R9-22-101
"Member"	A.R.S. § 36-2981
"Mental disorder"	A.R.S. § 36-501
"Native American"	R9-31-101
"New hospital"	R9-22-107 <u>R9-22-701</u>
"NF" or "nursing facility"	42 U.S.C. 1396r(a)
"NICU"	R9-22-107 <u>R9-22-701</u>
"Noncontracting provider"	A.R.S. § 36-2981
"Occupational therapy"	R9-22-102
"Offeror"	R9-31-106
"Operating costs"	R9-22-107 <u>R9-22-701</u>
"Outlier"	R9-31-107
"Outpatient hospital service"	R9-22-107 <u>R9-22-701</u>
"Ownership change"	R9-22-107 <u>R9-22-701</u>
"Partial care"	R9-31-112 <u>R9-22-112</u>
"Peer group"	R9-22-107 <u>R9-22-701</u>
"Pharmaceutical service"	R9-22-102
"Physical therapy"	R9-22-102
"Physician"	A.R.S. § 36-2981
"Post stabilization care services"	42 CFR 438.113 <u>42 CFR 438.114</u>
"Practitioner"	R9-22-102
"Pre-existing condition"	R9-31-105 <u>R9-31-501</u>
"Prepaid capitated"	A.R.S. § 36-2981
"Prescription"	R9-22-102
"Primary care physician"	A.R.S. § 36-2981
"Primary care practitioner"	A.R.S. § 36-2981
"Primary care provider (PCP)"	R9-22-102
"Primary care provider services"	R9-22-102
"Prior authorization"	R9-22-102
"Private duty nursing services"	R9-22-102
"Program"	A.R.S. § 36-2981
"Proposal"	R9-31-106
"Prospective rates"	R9-22-107 <u>R9-22-701</u>
"Provider"	A.R.S. § 36-2931
"PSP" or "Premium Sharing Program"	R9-31-103
"Psychiatrist"	R9-31-112 <u>A.R.S. § 36-501</u>
"Psychologist"	R9-31-112 <u>A.R.S. § 36-501</u>
"Psychosocial rehabilitation"	R9-31-112 <u>R9-22-112</u>
"Qualified alien"	A.R.S. § 36-2903.03
"Qualifying plan"	A.R.S. § 36-2981
"Quality management"	R9-22-105 <u>R9-22-501</u>
"Radiology services"	R9-22-102
"Regional Behavior Health Authority"	
or "RBHA"	R9-31-112 <u>A.R.S. § 36-3401</u>
"Rebasing"	R9-22-107 <u>R9-22-701</u>
"Redetermination"	R9-31-103
"Referral"	R9-22-101
"Rehabilitation services"	R9-22-102
"Reinsurance"	R9-22-107 <u>R9-22-701</u>
"Remittance advice"	R9-22-107 <u>R9-22-701</u>
"RFP"	R9-31-106
"Respiratory therapy"	R9-22-102
"Respondent"	R9-22-108
"Scope of services"	R9-22-102

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“SDAD”	R9-22-107
“Seriously ill”	R9-31-101
“Service location”	R9-22-101
“Service site”	R9-22-101
“SMI” or “Seriously mentally ill”	A.R.S. § 36-550
“Specialist”	R9-22-102
“Speech therapy”	R9-22-102
“Spouse”	R9-31-103
“SSI-MAO”	R9-31-103
“Stabilize”	42 U.S.C. 1395dd
“Standard of care”	R9-22-101
“Sterilization”	R9-22-102
“Subcontract”	R9-22-101
“Subcontractor”	R9-31-101
“Third-party”	R9-22-110 <u>R9-22-1001</u>
“Third-party liability”	R9-22-110 <u>R9-22-1001</u>
“Tier”	R9-22-107 <u>R9-22-701</u>
“Tiered per diem”	R9-31-107
“TRBHA”	R9-31-116
“Tribal facility”	A.R.S. § 36-2981
“Utilization management”	R9-22-105 <u>R9-22-501</u>

B. General definitions. The words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

“AHCCCS” means the Arizona Health Care Cost Containment System, which is composed of the Administration, contractors, and other arrangements through which health care services are provided to a member.

“American Indian” means Indian as specified in 42 CFR 137.10.

“Applicant” means a person who submits, or whose representative submits, a written, signed, and dated application for Title XXI ~~benefits~~ medical coverage.

“Application” means an official request for Title XXI medical coverage made under this Chapter.

“Contract year” means the period beginning on October 1 and continuing until September 30 of the following year.

“Inpatient hospital services” means medically necessary services that require an inpatient stay in an acute care hospital. ~~Inpatient hospital services~~ and that are provided by or under the direction of a physician or other health care practitioner upon referral from a member’s primary care provider.

“Native American” means Indian as specified in 42 CFR ~~36.1~~ 137.10.

“Seriously ill” means a medical or psychiatric condition manifesting itself by acute symptoms that left untreated may result in:

- Death,
- Disability,
- Disfigurement, or
- Dysfunction.

“Subcontractor” means a person, agency, or organization that enters into an agreement with a contractor or subcontractor to provide services.

R9-31-105. General Provisions and Standards Repealed

~~Definitions. The words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning: “Pre-existing condition” means an illness or injury that is diagnosed or treated within a six-month period preceding the effective date of coverage.~~

ARTICLE 5. GENERAL PROVISIONS AND STANDARDS

R9-31-501. General Provisions - and Standards - related Definitions

~~**A.** As specified in A.R.S. § 36-2986, the Director has full operational authority to adopt rules or to use the appropriate rules adopted for this Article.~~

~~**B.** Pre-existing Conditions. Eligibility for the program may not be denied based on a child having a pre-existing medical condition as specified in 42 U.S.C. 1397, August 5, 1997, incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.~~

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1. ~~Except as otherwise provided in Article 3 of this Chapter, a contractor shall be responsible for providing the full scope of covered services to each member from the effective date of eligibility until the time of notification of termination, suspension, or transfer of the member's enrollment. This responsibility includes providing treatment for all of a member's pre-existing conditions.~~
2. ~~A contractor or subcontractor shall not adopt or use any procedure to identify individuals who have an existing or anticipated medical or psychiatric condition in order to discourage or exclude the individuals from enrolling in the contractor's health plan or encourage the individuals to enroll in another health plan.~~

Definitions. In this Chapter, unless the context explicitly requires another meaning: "pre-existing condition" means an illness or injury that is diagnosed or treated within a six-month period before the effective date of coverage.

R9-31-502. Availability and Accessibility of Service Pre-existing Conditions

- A.** ~~A contractor shall provide adequate numbers of available and accessible:~~
1. ~~Institutional facilities;~~
 2. ~~Service locations;~~
 3. ~~Service sites; and~~
 4. ~~Professional, allied, and paramedical personnel for the provision of covered services, including all emergency medical services for 24 hours a day, seven days a week.~~
- B.** ~~A contractor shall minimally provide the following:~~
1. ~~A ratio of primary care providers to members, as specified in contract.~~
 2. ~~A designated emergency services facility, providing care 24 hours a day, seven days a week, accessible to members in each contracted service area. One or more physicians and one or more nurses shall be on call or on duty at the facility at all times.~~
 3. ~~An emergency services system employing at least one physician, registered nurse, physician's assistant, or nurse practitioner, accessible by telephone 24 hours a day, seven days a week, to members who need information in an emergency, and to providers who need verification of patient membership and treatment authorization.~~
 4. ~~An emergency services call log or database to track the following information:~~
 - a. ~~Member's name;~~
 - b. ~~Address and telephone number;~~
 - c. ~~Date and time of call;~~
 - d. ~~Nature of complaint or problem; and~~
 - e. ~~Instructions given to member.~~
 5. ~~A written procedure for communicating emergency services information to a member's primary care provider, and other appropriate organizational units.~~
 6. ~~An appointment standard as specified in contract for the following:~~
 - a. ~~Emergency appointments;~~
 - b. ~~Urgent care appointments; and~~
 - c. ~~Routine care appointments.~~
 7. ~~Waiting times for members with appointments that do not exceed 45 minutes, except when the provider is unavailable due to an emergency.~~
- C.** ~~A contractor shall have an affiliation with or subcontract with an organization or individual to provide primary care services. The contractor shall agree to provide services under the primary care provider's guidance and direction:~~
1. ~~A primary care provider selected by or to whom an enrolled member is assigned shall be responsible for:~~
 - a. ~~Supervising, coordinating, and providing initial and primary care to the member;~~
 - b. ~~Initiating referrals for specialty care;~~
 - c. ~~Maintaining continuity of member care; and~~
 - d. ~~Maintaining an individual medical record for each assigned member.~~
 2. ~~A primary care provider or specialist providing inpatient services to a member shall have staff privileges in a minimum of one general acute care hospital under subcontract with the contractor, within the service area of the contractor.~~
- A.** Pre-existing conditions. The Administration shall not deny eligibility for the program based on a child having a pre-existing medical condition as defined in R9-31-501.
- B.** A contractor or subcontractor shall not adopt or use any procedure to identify individuals who have an existing, pre-existing or anticipated medical or psychiatric condition to discourage or exclude the individuals from enrolling in the contractor's health plan or encourage the individuals to enroll in another health plan.

R9-31-504. Marketing; Prohibition against Inducements; Misrepresentations; Discrimination; Sanctions

- A.** ~~A contractor or the any person or entity acting as the contractor's marketing agent shall not offer or give any form of compensation or reward, or engage in any behavior or activity that may be reasonably construed as coercive, to induce or procure Title XXI enrollment. A contractor may make program applications available, but shall not assist with the completion of an application or suggest that an applicant enroll with particular contractor. Any marketing solicitation offering a bene-~~

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fit, good, or service, in excess of the covered services in 9 A.A.C. 31, Article 2 shall be deemed an inducement.

- ~~B.~~ Any person or entity acting as the contractor's marketing agent shall not misrepresent itself, the contractor represented, or the program, through false advertising, false statements, or in any other manner to induce a member of a current contractor to enroll with the prospective contractor. The Administration shall deem violations of this subsection to include, false or misleading claims, inferences, or representations that:
- ~~1.~~ A member will lose benefits under the program or any other health or welfare benefits to which the member is legally entitled, if the member does not enroll with the prospective contractor;
 - ~~2.~~ Marketing representatives are employees of the state or representatives of the Administration, a county, or any contractor other than the contractor with whom they are employed, or by whom they are reimbursed; and
 - ~~3.~~ The represented contractor is recommended or endorsed as superior to its competition by any state or county agency, or any organization, unless the organization has certified its endorsement in writing to the contractor and the Administration.
- ~~C.~~ Any person or entity acting as the contractor's marketing agent shall not engage in any marketing or pre-enrollment practice that discriminates against a member because of race, creed, age, color, sex, religion, national origin, ancestry, marital status, sexual preference, physical or mental disability, or health status.
- ~~D.~~ The Administration shall hold a contractor responsible for the performance of any person or entity acting as the contractor's marketing agent, subcontractor or agent, program, or process under its employ or direction and shall make the contractor subject to the contract sanctions in 9 A.A.C. 31, Article 6.

A contractor or any person or entity acting as the contractor's marketing representative shall follow the requirements in A.A.C. R9-22-504.

R9-31-505. Approval of Advertisements and Marketing Materials Repealed

- ~~A.~~ A contractor shall submit its proposed advertisements, marketing materials, and paraphernalia for review and approval by the Administration before distributing the materials or implementing the activities.
- ~~B.~~ A contractor shall submit all proposed marketing materials in writing to the Administration.
- ~~C.~~ The Administration shall review and approve or disapprove all marketing materials. The Administration shall include a statement of objections and recommendations in a notice of disapproval.
- ~~D.~~ To minimize the expense of revising advertising or other copy, a contractor may submit the marketing materials in draft form, subject to final approval and filing of a proof or final copy.
- ~~E.~~ A contractor shall provide two copies of the proof or final approved copy of marketing materials to the Administration.

R9-31-507. Member Record Repealed

As specified in A.R.S. § 36-2986, a contractor shall maintain a member service record that contains at least the following for each member:

- ~~1.~~ Encounter data;
- ~~2.~~ Grievances and requests for hearing;
- ~~3.~~ Any informal complaints, and
- ~~4.~~ Service information.

R9-31-508. Limitation of Benefit Coverage for Illness or Injury due to Catastrophe Repealed

The Director may limit the scope of health care benefits provided by a prepaid capitated contractor to exclude the care of illness or injury that results from, or is greatly aggravated by, a catastrophic occurrence, including an act of declared or undeclared war, that occurs after enrollment.

R9-31-509. Transition and Coordination of Member Care

- ~~A.~~ As specified in A.R.S. § 36-2986, the Administration shall coordinate and implement disenrollment and re-enrollment procedures if a member's change of residency requires a change in contractor.
- ~~B.~~ A contractor shall assist in the transition of members to and from other contractors.
- ~~1.~~ Both the receiving and relinquishing contractor shall:
 - ~~a.~~ Coordinate with the other contractor to facilitate and schedule appointments for medically necessary services for the transitioned member within the Administration's timelines specified in the contract. A contractor's policies and procedures regarding transition of members are subject to review and approval by the Administration;
 - ~~b.~~ Assist in the referral of transitioned members to other community health agencies or county medical assistance programs for medically necessary services not covered by the Administration, as appropriate; and
 - ~~c.~~ Develop policies and procedures for transitioning members who have significant medical conditions, are receiving ongoing services, or have, at the time of the transition, received prior authorization or approval for undelivered, specific services.
 - ~~2.~~ The relinquishing contractor shall notify the receiving contractor of relevant information about the member's medical condition and current treatment regimens within the timelines defined in contract.
 - ~~3.~~ The relinquishing contractor shall forward medical records and other materials regarding the member's medical condition to the receiving contractor. The cost of reproducing and forwarding medical records and other materials shall

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be borne by the relinquishing contractor.

4. Within the contract specified timelines, the receiving contractor shall ensure that the member selects or is assigned to a primary care provider, and provide the member with:
 - a. Information regarding the contractor's providers;
 - b. Emergency numbers, and
 - c. Instructions about how to obtain new services.

~~C. A contractor shall not use a county or noncontracting provider health resource alternative that diminishes the contractor's contractual responsibility or accountability for providing the full scope of covered services. The Administration may sanction a contractor under 9 A.A.C. 31, Article 6 for referrals made to other health agencies by the contractor, primarily to reduce expenditures incurred by the contractor on behalf of its members.~~

~~D. A contractor may transfer a member as specified in A.R.S. § 36-2986, from a noncontracting provider to a contracting provider's facility if a transfer will not be harmful to the member's health as authorized by the member's primary care provider or the contractor's medical director. A member's contractor shall pay the cost of transfer.~~

The Administration or a contractor shall conduct transition and coordination of member care as described in A.A.C. R9-22-509.

R9-31-510. Transfer of Members Repealed

As specified in A.R.S. § 36-2989, a contractor shall implement procedures to allow a member to transfer from the primary care provider of record to another primary care provider within the same contracting organization. Criteria for a transfer include, but are not be limited to:

1. Change in the member's health, requiring a different medical focus;
2. Change in the member's residency resulting in difficulty in obtaining services from the assigned primary care provider; or
3. Identification of any problem between the member and the primary care provider, resulting in deterioration of the primary care provider member relationship.

R9-31-511. Fraud or Abuse Repealed

As specified in A.R.S. §§ 36-2986 and 36-2992, a contractor, provider, or noncontracting provider shall advise the Director or designee immediately, in writing, of any case of suspected fraud or abuse.

R9-31-512. Release of Safeguarded Information by the Administration and Contractors

~~A. The Administration, a contractor, a provider, and a noncontracting provider shall safeguard information concerning an applicant or member which includes the following:~~

1. Name and address;
2. Social Security number;
3. Social and economic conditions or circumstances;
4. Agency evaluation of personal information;
5. Medical data and services, including diagnosis and history of disease or disability;
6. State Data Exchange (SDX) tapes from the U.S. Social Security Administration; and
7. Information system tapes from the Arizona Department of Economic Security.

~~B. The restriction upon disclosure of information does not apply to:~~

1. Summary data;
2. Statistics;
3. Utilization data; and
4. Other information that does not uniquely identify an applicant or member.

~~C. The Administration, a contractor, a provider, and a noncontracting provider shall use or disclose information concerning an applicant or member only under the conditions specified in subsections (D), (E), and (F) and only to:~~

1. The person concerned;
2. Individuals authorized by the person concerned; and
3. Persons or agencies for official purposes.

~~D. Safeguarded information shall be viewed by or released for only:~~

1. An applicant;
2. A member; or
3. An unemancipated minor, with written permission of a parent, custodial relative, or designated representative, if:
 - a. An Administration employee or its authorized representative, or responsible caseworker is present during the examination of the eligibility record; or
 - b. As outlined in subsection (E) after written notification to the provider, and at a reasonable time and place.
4. A purpose as specified in R9-31-512(F).

~~E. An eligibility case record, medical record, and any other Title XXI-related confidential and safeguarded information regarding a member, applicant, or unemancipated minor shall be released to individuals authorized by the member, applicant, or unemancipated minor only under the following conditions:~~

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1. Authorization for release of information is obtained from the member, applicant, or designated representative;
 2. Authorization used for release is a written document, separate from any other document, that specifies the following information:
 - a. Information or records, in whole or in part, which are authorized for release;
 - b. To whom release is authorized;
 - c. The period of time for which the authorization is valid, if limited; and
 - d. A dated signature of the adult and mentally competent member, applicant, or designated representative. If the member, or applicant is a minor, the signature of a parent, custodial relative, or designated representative shall be required. If the member, or applicant is mentally incompetent, authorization shall be according to A.R.S. § 36-509;
 3. If an appeal or grievance is filed, the member, applicant, or designated representative shall be permitted to review and obtain or copy any nonprivileged record necessary for the proper presentation of the case.
- F.** Release of safeguarded information to individuals or agencies for official purposes:
1. Official purposes directly related to the administration of the Title XXI program include:
 - a. Establishing eligibility and premiums, as applicable;
 - b. Determining the amount of medical assistance;
 - c. Providing services for members;
 - d. Conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to the Title XXI program;
 - e. Performing evaluations and analyses of Title XXI operations;
 - f. Filing liens on property, as applicable;
 - g. Filing claims on estates, as applicable; and
 - h. Filing, negotiating, and settling medical liens and claims.
 2. For official purposes related to the administration of the Title XXI program and only to the extent required in performance of duties, safeguarded information, including case records and medical records, may be disclosed to the following persons without the consent of the applicant or member:
 - a. Employees of the Administration;
 - b. Employees of the U.S. Social Security Administration;
 - c. Employees of the Arizona Department of Economic Security;
 - d. Employees of the Arizona Department of Health Services;
 - e. Employees of the U.S. Department of Health and Human Services;
 - f. Employees of contractors, providers, and subcontractors;
 - g. Employees of the Arizona Attorney General's Office; or
 - h. Qualifying community health centers as specified in A.R.S. § 36-2907.06 and hospitals as specified in A.R.S. § 36-2907.08.
 3. Law enforcement officials:
 - a. Information may be released to law enforcement officials without the applicant's, or member's written or verbal consent, for the purpose of an investigation, prosecution, or criminal or civil proceeding relating to the administration of the Title XXI program.
 - b. Medical record. The Administration and contractors shall release safeguarded information contained in a member's medical record to law enforcement officials without the member's consent in situations of suspected of fraud or abuse against the Title XXI program.
 - c. A contractor shall release the medical record or information in the case record or other information developed in case management or utilization management operations without the member's written or verbal consent, for the purpose of an investigation, prosecution, or similar criminal proceeding not in connection with the Administration, only if the law enforcement official requesting the information has statutory authority to obtain the information.
 4. The Administration may release safeguarded information including case records and medical records to a review committee in accordance with the provisions of A.R.S. § 36-2986, without the consent of the applicant or member.
 5. Providers shall furnish requested records to the Administration and its contractors at no charge.
- G.** The holder of a medical record of a former applicant or member shall obtain written consent from the former applicant or member before transmitting the medical record to a primary care provider.
- H.** Subcontractors are not required to obtain written consent from a member before transmitting the member's medical records to a physician who:
1. Provides a service to the member under subcontract with the program contractor;
 2. Is retained by the subcontractor to provide services that are infrequently used or are of an unusual nature, and
 3. Provides a service under the contract.

The Administration, a contractor, provider, and noncontracting provider shall meet the requirements specified in A.A.C. R9-22-512 regarding release of safeguarded information for an applicant or member.

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R9-31-513. Discrimination Prohibition Repealed

- A.** A contractor, provider, or noncontracting provider shall not discriminate against a member:
1. Under Title VI of the U.S. Civil Rights Act of 1964, 42 U.S.C. 2000d,
 2. Because of:
 - a. Marital status,
 - b. Sexual preference,
 - c. Age,
 - d. Sex, or
 - e. Behavioral disability, or
 3. In violation of any other rule or regulation provided by law.
- B.** For the purpose of providing a covered service under contract according to A.R.S. Title 36, Ch. 29, discrimination includes, the following if done on the grounds subsection (A):
1. Denying or providing a member any covered service or availability of a facility;
 2. Providing to a member any covered service that is different, or is provided in a different manner or at a different time from that provided to other members under contract, other public or private members, or the public at large except when medically necessary;
 3. Subjecting a member to segregation or separate treatment in any manner related to the receipt of any covered service;
 4. Restricting a member in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any covered service; and
 5. Assigning to a member times or places for the provision of services that are different from those assigned to other members.
- C.** A contractor shall take affirmative action to ensure that members are provided covered services without discrimination under Section (A) except where medically indicated.

R9-31-514. Equal Opportunity Repealed

- A contractor shall, in all solicitations or advertisements for employees placed by, or, on behalf of the contractor:
1. Specify that it is an equal opportunity employer;
 2. Send a notice provided by the Administration to each labor union representative or worker with a collective bargaining agreement, or other contract or understanding, stating that the contractor is an equal opportunity employer; and
 3. Post copies of the notice in conspicuous places available to employees and applicants for employment.

R9-31-518. Information to Enrolled Members

- A.** As specified in A.R.S. § 36-2986, each contractor shall produce and distribute printed information materials to each member within 10 days of receipt of notification of enrollment from the Administration. The information materials shall be written in English and all languages used by 200 members or 5%, whichever is greater, of the enrolled population. The information materials must meet the requirements specified in the contractor's current contract.
- B.** A contractor shall provide a member with the name, address, and telephone number of the member's primary care provider within 10 days from the date of enrollment. This notice shall include information on how the member may change primary care providers, if dissatisfied with the primary care provider assigned.
- C.** A contractor shall revise and distribute to members a service guide insert describing any change that the contractor proposes to make in services provided or service locations. The insert shall be distributed to all affected members at least 14 days before a planned change. Notification shall be provided as soon as possible when unforeseen circumstances require an immediate change in services, sites or locations.
- D.** A contractor shall submit informational and educational materials for approval by the Administration before distributing the materials to members.

A contractor shall provide information to enrolled members as described under R9-22-518.

R9-31-520. Financial Statements, Periodic Reports, and Information Repealed

- A.** Upon request by the Administration, a contractor shall furnish to the Administration information from its records relating to contract performance.
- B.** A contractor shall provide the Administration with the following:
1. An annual certified financial report prepared by a certified public accountant submitted no later than 120 days after the close of the contractor's fiscal year. The certified public accountants who prepare the report shall be independent of the contractor, subcontracting entities, their officers or directors, and any affiliates.
 2. Quarterly financial statements no later than 60 days after the end of the reporting month.
 3. Monthly financial statements, if required by the Administration submitted no later than 60 days after the end of the reporting period.
 4. Disclosure of information on ownership and control required by 42 CFR 455, Subpart B, September 30, 1986, incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.

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5. Cost reporting, audits, and financial reporting as specified in contract or provider agreement.
- C.** All financial statements shall identify separately all AHCCCS related transactions, including allocations of overhead and other shared expenses where applicable. A contractor shall provide supplemental schedules describing all inter entity transactions and eliminations for the Administration to use in analyzing the financial status of the entire health care delivery system.

R9-31-521. Program Compliance Audits Repealed

- A.** As specified in A.R.S. § 36-2986, the Administration shall conduct a program compliance audit of a contractor at least once every 12 months during the term of its contract with the contractor. Unless the Administration determines that advance notice will render a program compliance audit less useful, a contractor shall be notified at least three weeks in advance of the date of an onsite program compliance audit. The Administration may conduct, without prior notice, inspections of contractor facilities or perform other elements of a program compliance audit, either in conjunction with the program compliance audit or as part of an unannounced inspection program.
- B.** The Administration's review team may perform any or all of the following procedures:
1. Conduct private interviews and group conferences with members, physicians, and other health professionals and members of a contractor's administrative staff including, but not limited to, the contractor's principal management persons;
 2. Examine records, books, reports, and papers of a contractor and any management company, and all providers or subcontractors providing health care and other services to the contractor. The examination may include, but not be limited to: minutes of medical staff meetings, peer review and quality of care review records, duty rosters of medical personnel, appointment records, written procedures for the internal operation of the contractor, contracts and correspondence with members and with providers of health care services and other services to the plan, and additional documentation deemed necessary by the Administration to review the quality of medical care.

R9-31-522. Quality Management/Utilization Management (QM/UM) Requirements

- A.** As specified in A.R.S. §§ 36-2986 and 36-2990, a contractor shall comply with Quality Management/Utilization Management (QM/UM) requirements specified in this Section and in contract. The contractor shall ensure compliance with QM/UM requirements that are accomplished through delegation or subcontract with another party.
- B.** A contractor shall:
1. Submit a written QM/UM plan that includes a description of the systems, methodologies, protocols, and procedures to be used in:
 - a. Monitoring and evaluating the types of services;
 - b. Identifying the numbers and costs of services provided;
 - c. Assessing and improving the quality and appropriateness of care and services;
 - d. Evaluating the outcome of care provided to members; and
 - e. Determining the steps and actions necessary to improve service delivery.
 2. Submit the QM/UM plan on an annual basis within timelines specified in contract. If the QM/UM plan is changed during the year, the contractor shall submit the revised plan before implementation;
 3. Receive approval from the Administration before implementing the initial QM/UM plan;
 4. Ensure that a QM/UM committee operates under the control of the contractor's medical director, and includes representation from medical and executive management personnel. The committee shall:
 - a. Oversee the development, revision and implementation of the QM/UM plan; and
 - b. Ensure and allocate qualified QM/UM personnel and sufficient resources to implement the contractor's QM/UM activities.
 5. Ensure that the QM/UM activities include at least:
 - a. Prior authorization for non-emergency or scheduled hospital admissions;
 - b. Concurrent review of inpatient hospitalization;
 - c. Retrospective review of hospital claims;
 - d. Program and provider audits designed to detect over or under utilization, service delivery effectiveness, and outcome;
 - e. Medical records audits;
 - f. Surveys to determine satisfaction of members;
 - g. Assessment of the adequacy and qualifications of the contractor's provider network;
 - h. Review and analysis of QM/UM data; and
 - i. Other activities necessary to improve the quality of care and the efficient, cost effective delivery and utilization of services.
- C.** A member's primary care provider shall maintain medical records that:
1. Are detailed and comprehensive and identify:
 - a. All medically necessary services provided to the member by the contractor and the subcontractors, and
 - b. All emergency services provided by nonproviders for a member.

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2. Conform to professional medical standards and practices for documentation of medical diagnostic and treatment data;
 3. Facilitate follow-up treatment; and
 4. Permit professional medical review and medical audit processes.
- D.** A subcontractor or its designee shall forward medical records or copies of medical records of all members assigned to the subcontractor or for whom the subcontractor has provided services, within 30 days following termination of a contract between the subcontractor and the contractor.
- E.** The Administration shall monitor contractors and their providers to ensure compliance with Administration QM/UM requirements and adherence to the contractor QM/UM plan.
1. A contractor and its providers shall cooperate with the Administration in the performance of its QM/UM monitoring activities; and
 2. A contractor and its providers shall develop and implement mechanisms for correcting deficiencies identified through the Administration's QM/UM monitoring.

A contractor shall comply with Quality Management/Utilization Management (QM/UM) requirements as described under A.A.C. R9-22-522.

R9-31-523. Financial Resources Repealed

- A.** As specified in A.R.S. § 36-2986, a contractor or offeror shall demonstrate upon request to the Administration that it has:
1. Adequate financial reserves;
 2. Administrative abilities; and
 3. Soundness of program design to carry out its contractual obligations.
- B.** As specified in A.R.S. § 36-2986, the Director requires that contract provisions include, but not be limited to:
1. Maintenance of deposits;
 2. Performance bonds;
 3. Financial reserves; or
 4. Other financial security.

R9-31-524. Continuity of Care Repealed

As specified in A.R.S. § 36-2986, a contractor shall establish and maintain a system to ensure continuity of care which shall, at a minimum, include:

1. Referring members who need specialty health care services;
2. Monitoring members with chronic medical conditions;
3. Providing hospital discharge planning and coordination including post-discharge care; and
4. Monitoring operation of the system through professional review activities as specified in A.R.S. § 36-2986.